



NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credits Compliance Monitoring Procedures Manual



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INTRODUCTION

BACKGROUND

Under the federal Tax Reform Act of 1986, the U.S. Department of Treasury established the Low Income Housing Tax Credit Program as an incentive for investment in the construction and rehabilitation of low income housing. The Internal Revenue Service (“IRS”), as part of the Department of Treasury, became the administrator of the tax credit program described in Section 42 of the Internal Revenue Code (“IRC”, “Code”)(See [Exhibit D10](#)). The New Jersey Housing and Mortgage Finance Agency (the “Agency”) was designated as the housing credit agency for the State of New Jersey responsible for allocating the Low Income Housing Tax Credit.

The Omnibus Budget Reconciliation Act of 1990 amended the Internal Revenue Code to require that the designated housing credit agency establish a procedure for monitoring housing developments for compliance with the federal tax credit program regulations effective January 1, 1992. Following that amendment, the Internal Revenue Service adopted final regulations which describe the minimum procedure that the designated housing credit agency must follow for monitoring compliance of buildings developed with the low income housing credit (See [Exhibit D1](#)). These final regulations became effective June 30, 1993.

PURPOSE FOR THIS MANUAL

This manual, designed by the New Jersey Housing and Mortgage Finance Agency (“the Agency”), is a guide to understanding compliance monitoring under Section 42 of the Internal Revenue Code, which governs the use of the Low Income Housing Tax Credit. It was developed, pursuant to Section 42 of the IRC and the IRS Procedure for Monitoring Compliance, for project owners, management companies, on-site management personnel and anyone involved with Agency procedures for monitoring compliance of tax credit properties. It is intended to be used as a supplement, and not a replacement, to the Internal Revenue Code, revenue procedures, revenue rulings, letter rulings, notices, announcements, any applicable Treasury regulations and any applicable federal law.

The Internal Revenue Service requires that the New Jersey Housing and Mortgage Finance Agency as the housing credit agency for the State of New Jersey monitor all projects that were developed as a result of an allocation of tax credits.

The Internal Revenue Service has made it clear that compliance with the requirements of the Code is the sole responsibility of the owner of any building for which the credit has been allocated. The Agency’s responsibility to monitor for compliance will not cause the Agency to be liable for an owner’s noncompliance. Therefore, an owner should not rely solely on the

Agency to determine if the project records are in compliance. In addition, the owner should not rely solely on any outside service, organization or agency in their dealings with the owner's tax credit buildings. Any error that is made will be the responsibility of the owner.

Use of this manual does not ensure compliance with the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing Low-Income Housing Tax Credits. In addition, it does not guarantee the financial viability of any project. As a result, the Agency recommends that all tax credit recipients consult their tax accountant, attorney or advisor as to the specific requirements of the tax credit program and Section 42 of the Code.

CHAPTER 1

COMPLIANCE PROCEDURES

The Agency is required by the Internal Revenue Service to monitor each development throughout the project's compliance period. This section of the manual outlines the Agency's compliance procedures that should be followed by the owners of projects that were developed as a result of an allocation of tax credits. These procedures are consistent with the Internal Revenue Service Procedure for Monitoring Compliance. Compliance with the Internal Revenue Code and these procedures is necessary to assure the continued use of the low income housing tax credit.

Agency Responsibilities

The Agency allocates tax credits through a competitive application process in accordance with the State's qualified allocation plan. An allocation plan is qualified if it contains a procedure that the Agency will follow in monitoring compliance with the provisions of the Code. Once an allocation is awarded, the owner will receive from the Agency the Form 8609 (See [Exhibit E1](#)) with Part I completed by the Agency. The Agency will then do the following to monitor a project for compliance:

1. Provide the building owner with the Internal Revenue Service Procedure for Monitoring Compliance and the Agency's Monitoring Procedures Manual (*This document*).
2. Annually request and review the submission of the Owners Certificate of Continuing Program Compliance (See [Exhibit B1](#)), the Annual Project Certification with Special Needs Component (See [Exhibit B2](#)), and Social Service Model and Annual Tenant information submitted via the Mitas Web Access System for the preceding twelve (12) month period.
3. For a minimum of thirty-three (33) percent of the projects, annually perform physical inspections of developments and reviews of tenant files and project files (See *Owner/Agent Recordkeeping* [Exhibit D9](#)). The Agency will select which projects will undergo Agency review and will give owners reasonable notice that their project has been chosen as well as identify which documents will need to be submitted. Reviews may occur more frequently than on a twelve (12) month basis, provided that all months within each twelve (12) month period are subject to certification.
4. The Agency may also review the records of occupancy for the first twelve (12) months in order to ensure that the minimum set-aside was met within the appropriate time period. (*In order to claim any tax credits, owners must meet their minimum set-aside by the end of the first year in which the project is placed in service or by December 31st of the following year depending on which year is the first year of the credit period. Owners are encouraged to speak with their legal counsel regarding this issue.*)

5. Notify the owner and/or agent of any noncompliance or failure to certify, as required by the IRS.
6. Report to the Internal Revenue Service all noncompliance via Form 8823 (*See [Exhibit E2](#)*) within 45 days of the end of the owner's correction period regardless of whether or not the noncompliance was corrected.
7. Retain compliance records as per the IRS Procedure for Monitoring Compliance.
8. Provide owners and/or agents with applicable rules and regulations and notice of program changes throughout the compliance period. *However, it is the owner's ultimate responsibility to ensure that the project complies with all program requirements regardless of whether the Agency sent a notice regarding changes.*
9. When scheduling permits, provide owners/agents with at least one compliance training per year.

Owner/Managing Agent Responsibilities

Each building owner has chosen to utilize the Low Income Housing Tax Credit Program and take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met throughout the compliance period that will ensure the continuance of the tax credit.

Although an owner may have a managing agent acting on his or her behalf, the owner is ultimately responsible for ensuring compliance with all applicable low income housing tax credit regulations and rules. In selecting a managing agent, the owner should ensure that the agent and all on-site personnel are knowledgeable of the provisions and requirements of the tax credit program and have adequate experience in managing a tax credit project.

The owner/agent must:

1. For projects that received an allocation of tax credits prior to 2001, pay an annual or one-time compliance monitoring fee to cover the cost of the Agency's review. For projects that received an allocation post 2000, pay an allocation/issuance fee to cover the cost of the Agency's review.
2. Submit to the Agency a copy of IRS Form 8609 (*See [Exhibit E1](#)*) with Part II completed, once filed with the Internal Revenue Service for the first year of the credit period.
3. Income qualifies each tenant household by collecting income documentation and have that tenant sign a move-in certification (*See Chapter 4, Certifying Annual Income, and [Exhibit C1](#)*). Annually, recertify each tenant by collecting current income documentation and have him or her sign a recertification. For residents residing in 100% tax credit properties, an initial certification shall be required at

move-in, followed by a re-certification on the 1 year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to operate 100% affordable/tax credit. While a resident shall still be required to complete the Tenant income Certification and other forms on an annual basis, 3rd party verification of income shall no longer be required.

4. Meet minimum set-aside within the required time frame. If a project fails to meet the minimum set-aside by the end of the first credit year, the owner may be subject to full recapture of the tax credits.
5. For projects that were allocated credits based on the agreement to serve a special needs population and/or the provision of social services, within sixty (60) days of 100 percent occupancy must provide documentation to the Agency that the project is serving a special needs population or reasonable attempts have been made to serve a special needs population and/or all social services are in place.
6. Annually submit the Owners Certificate of Continuing Program Compliance (*See [Exhibit B1](#)*) to the Agency which requests that you certify, under penalty of perjury, that for the preceding twelve (12) month period all requirements of the Low Income Housing Tax Credit Program have been met.
7. For projects that were allocated credits based on the agreement to serve a special needs population and/or the provision of social services, annually submit to the Agency, an Annual Project Certification for Projects with a Special Needs Component and Social Service Model (*See [Exhibit B2](#)*).
8. Annually, submit to the Agency, Tenant information via Mitas Web Access System, which asks for certain tenant income, asset and rent information for the preceding twelve (12) month period.
9. Make available to Agency personnel, upon request, annual tenant income certifications/re-certifications, supporting income documentation, rent rolls, social service agreements/contracts and other information that the Agency deems necessary to monitor compliance and facilitate the Agency's compliance review (*See [Exhibit D9](#)*).
10. Upon request, accompany Agency personnel on a physical inspection of the housing development.
11. Ensure that the housing development is properly administered at all times and is suitable for occupancy, taking into account state ("Chapter 10, Maintenance of Hotels and Multiple Dwellings Regulations, N.J. Department of Community Affairs"), local health, safety and building codes.
12. Retain and maintain records demonstrating the project's compliance for each year of the compliance period

13. Keep the Agency informed of any changes affecting the development, such as project ownership and/or management during the compliance period, change in address of owner or management, etc.

NOTE - Owners of buildings/projects that have received tax credits are required to inform the NJHMFA of the sale of any building(s) which takes place during the compliance period, within thirty days of the ownership change. The owner should specify the following information:

- Project Address
 - Original Owner
 - New Owner
 - New Owner Tax Identification Number
 - If project was not sold in its entirety, please explain.
 - Date of transfer.
14. Notify the Agency immediately if the development is not in compliance with the tax credit program requirements.
 15. Take action to correct any incidents of noncompliance within the required time frame. The Agency must report to the IRS any violation of the requirements of the low income housing tax credit program. Failure to correct within the time specified by the Agency may result in the loss of tax credits.
 16. Submit on an annual basis by May 1 a copy of the project's audited financial statement for the prior fiscal year.

Certification by the Owner (See Owners Certificate of Continuing Program Compliance, [Exhibit BI](#))

The owner/agent of a low income housing project must certify, under penalty of perjury, annually to the Agency for each year of the compliance period that for the preceding twelve (12) month period:

- 1) The project met the requirements of the 20-50 test under Section 42(g)(1)(A), (20% or more of the residential units are both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income as adjusted for family size); or the 40-60 test under Section 42(g)(1)(B), (40% or more of the residential units are both rent restricted and occupied by tenants whose income is 60% or less of the area median gross income as adjusted for family size, whichever minimum set-aside test was applicable to the project.

The project also met the requirements of the 40-50 test under Section 42(i)(2)(E)(i) (for buildings receiving HOME assistance 40% or more of the residential units are occupied by individuals whose income is 50% or less of the area median gross income as adjusted for family size); and if applicable to the project, the 15-40 test under Sections 42(g)(4) and 42(d)(4)(B) for “deep rent skewed” projects.

- 2) There was no change in the applicable fraction of any building in the project (Section 42(c)(1)(B), or that there was a change and a description of the change. Any change in the applicable fraction that results in a decrease in the qualified basis of the project is considered to be noncompliance that must be reported to the IRS.
- 3) The Owner received an annual income certification on each low income tenant, and documentation to support that certification; or in the case of a tenant receiving Section 8 Housing Assistance Payments, a statement from a public housing authority that the tenant's income does not exceed the applicable limits under federal regulations. For residents residing in 100% tax credit properties, an initial certification shall be required at move-in, followed by a re-certification on the 1 year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to operate 100% affordable/tax credit. While a resident shall still be required to complete the Tenant income Certification and other forms on an annual basis, 3rd party verification of income shall no longer be required.
- 4) Each low income unit in the project was rent restricted under Section 42(g)(2).
- 5) All units in the project were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii)).
- 6) Each building in the project was suitable for occupancy, taking into account state, local health, safety and building codes.
- 7) There was no change in the eligible basis of any building in the project, or if there was a change, the nature of the change (as defined in Section 42(d), e.g. a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge). As stated earlier, any change in the eligible basis that results in a decrease in the qualified basis of the project is considered to be noncompliance and must be reported to the IRS.
- 8) All tenant facilities included in the eligible basis under Section 42(d) of any building in the project such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.
- 9) If a low income unit in the project became vacant during the year that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.
- 10) If the income of tenants of a low income unit who previously were verified to be income eligible increases to above 140 percent of the applicable limited allowed in Section 42(g)(2)(D)(ii), that unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income.

- 11) That an extended low-income housing commitment as described in Section 42(h)(6) of the Code was in effect for buildings subject to Section 7108-(c)(1) of the Revenue Reconciliation Act of 1989, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. In addition, that owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provision, including any special provisions, as outline in the extended low-income housing commitment;
12. That no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;
13. That if the owner received its credit allocation from the Nonprofit set-aside (Section 42(h)(5) of the Code), that the non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code; and
14. That there has been no change in the ownership or management of the project, or that there was a change and a description of the change.

Monitoring Fee

For projects that received an allocation prior to 2001, the Agency charges a fee to cover the cost of monitoring each project's compliance with the tax credit program. The owner/agent must elect one of the following payment options and send a payment no later than January 31 of the year following the year the project placed in service:

One-Time Fee	\$625 per low income unit
Annual Fee	\$60 per low income unit

If an owner/agent elects the annual fee, the annual payment will be due on January 31 of each year of the compliance period. The Agency may find a project out of compliance for nonpayment of the monitoring fee. Such noncompliance will be reported to the Internal Revenue Service.

For projects that received an allocation post 2000, the Agency charges an allocation/issuance fee to cover the cost of monitoring each project's compliance with the tax credit program.

The monitoring fee is waived for projects with permanent financing from the Agency because the Agency collects a fee from these projects.

Owner/Agent Recordkeeping

Owners/agents are required to keep records for each qualified low income building in the project which will show for each year of the compliance period the following information:

- 1) The total number of residential rental units in the building, including the number of bedrooms and the square footage of each residential rental unit.
- 2) The percentage of residential rental units in the building that are low income.
- 3) The rent charged on each residential rental unit in the building, including any utility allowances.
- 4) The number of occupants in each low income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2)(as in effect before the Revenue Reconciliation Act of 1989).

NOTE - Prior to the passage of the Revenue Reconciliation Act of 1989, maximum allowable rent for a low-income unit was determined by the actual size of the family occupying the unit. Section 42(g)(2) states that a unit is rent restricted if the gross rent does not exceed 30 percent of the income limitation applicable to such unit. Therefore, the maximum allowable gross rent varied based on the number of individuals occupying the unit. Those projects receiving an allocation of tax credits prior to 1990 could make an election to continue using family size in determining maximum allowable rent, or could elect the apartment size (number of bedrooms) method. This election had to be made by February 7, 1994 and only affects any households first occupying any of the units after the date of this election. Managing agents should check with the owner or the Agency to determine whether an election was made so that rents could be calculated correctly. (See [Exhibit D7](#))

- 5) The low income unit vacancies in the building and information that shows when and to whom the next available units were rented .
- 6) The annual income certification of each low income tenant per unit. For residents residing in 100% tax credit properties, an initial certification shall be required at move-in, followed by a re-certification on the 1 year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to operate 100% affordable/tax credit. While a resident shall still be required to complete the Tenant income Certification and other forms on an annual basis, 3rd party verification of income shall no longer be required.
- 7) Documentation to support each low income tenant's income certification (i.e., a copy of the tenant's federal income tax return, W-2 form or income verification from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for federal income tax liability (See [Exhibit D11](#)).

In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g). (See [Exhibit C10](#))

- 8) The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- 9) The character and use of the non-residential portion of the building included in the building's eligible basis under section 42(d) (i.e., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

Owner/Agent Record Retention

- 1) Owners/agents are required to retain the records described above for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year.
- 2) The records for the first year of the credit period, however, must be retained for the entire compliance period plus six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building (21 years total).

Therefore, records for the first year of the compliance period must be retained for twenty-one (21) years. Records for each year thereafter must be retained for six (6) years after filing the federal income tax return for that particular year.

Record Retention by the Agency

The Agency must retain records of noncompliance or failure to certify for a minimum of six (6) years beyond the Agency's filing of the IRS Form 8823 (See [Exhibit E2](#)). In all other cases, the Agency must retain the certification and records submitted by the owner for three (3) years from the end of calendar year in which they were received by the Agency.

Notification of Noncompliance

Upon determination by the Agency of noncompliance with Section 42 of the Internal Revenue Code or other relevant rules and regulations (e.g., the Agency does not receive the annual certification, fee and supporting documentation described above or does not receive or is not permitted to inspect the tenant records when requested or discovers by inspection or in some other manner that the project is not in compliance), the Agency will give prompt written notice to the owner/agent of the violation. The owner/agent will then be given up to ninety (90) days from the date of the notice to correct the violation. The Agency may extend the correction period for an additional six months if the Agency determines there is reasonable basis to grant such an extension. Ultimately, the *owner* (not the managing agent) will be held liable for instances of non-compliance and the correction of such deficiencies.

Within forty-five (45) days of the end of the correction period, the Agency will notify the IRS via Form 8823 (See [Exhibit E2](#)) of the noncompliance and report whether the owner has or has not corrected the violation.

Agency Notice

The following schedule outlines the amount of time the Agency will give under certain circumstances. *Please be aware that the Agency reserves the right to give less notice or no notice under circumstances where the Agency deems necessary, such as when the health and safety of the tenants residing in the building may be jeopardized.*

Circumstances

Notice

*A project is chosen as part of the Agency's one-third requirement and will undergo a file review and a physical inspection

The Agency will give a minimum of ten (10) days notice

*The Agency notifies an owner/agent that the project is in compliance or out of compliance.

The Agency will notify an owner of any compliance or noncompliance within forty-five (45) days of the determination

*The Agency gives an owner/agent time to correct any noncompliance

The Agency will give a minimum of thirty (30) days to correct a noncompliance.

Due Dates

*Owners Certificate of Continuing Program Compliance, Annual Project Certification for Special Needs Component and Social Service Models.

Due January 31 of each calendar year

*Payment of the Monitoring Fee

Due January 31 of each calendar year

*Submission of the Form 8609 with Part II completed by the owner (See [Exhibit E1](#))

Due thirty (30) days from the date of the owner's first filing of the form with the IRS

*Provide evidence to the Agency that a special needs population is being served and/or all social services are in place

Prior to the issuance of Form 8609 and when audited

The Agency's thirty-three (33%) percent review requirement

Begins on or around February 1 of each calendar year

*Keep the Agency informed of any changes affecting the development, such as project ownership and/or management during the compliance period, change in address of owner or management	Thirty (30) days from the date of the change
*Submission of audited financial statement for the prior fiscal year, including a detailed income and expense schedule and vacancy rate calculation	Due May 1 of each calendar year
* Submission of tenant information via MITAS Web Access System	Due January 31 st of each calendar year

CHAPTER 2

TAX CREDIT COMPLIANCE BASICS

This section of the manual defines and describes common terms of the tax credit program, particularly those associated with compliance. For terms not identified in this section, please consult Section 42 of the Internal Revenue Code (See [Exhibit D10](#)).

Applicable Fraction

The "applicable fraction" is the *lesser* of the following: the actual percentage of low income units in the development or the actual percentage of residential square feet occupied by low-income tenants which the owner has reserved for low-income tenants. Depending on the set-aside option elected, the applicable fraction will be either a *minimum* of 20 or 40 percent. The owner may choose to impose a more stringent set-aside requirement for the project. If this is the case, the applicable fraction (which would be higher than 20 or 40 percent and may be 100 percent) must be met throughout the compliance period. For example, if a project has chosen the 20-50 minimum set-aside and a 100 percent applicable fraction, then 100 percent of the project must be rent-restricted and occupied by tenants earning 50 percent or less of the area gross median income.

The applicable fraction is memorialized within the Deed of Easement and Restrictive Covenant. If the managing agent is unsure of the applicable fraction, which must be met throughout the compliance period, the agent should contact the owner. This is important because the managing agent must ensure that the proper number of apartments are rented and re-rented to low income tenants. In many cases, the applicable fraction is 100 percent and all units must be rented and re-rented to low income tenants.

SPECIAL NOTE FOR MANAGERS' UNITS:

For buildings placed in service after September 9, 1992, a unit occupied by a full-time resident manager may be included in the eligible basis of the building. However, the unit is excluded from both the numerator and denominator of the applicable fraction. For instance, if a building contains 100 units with 99 occupied by low income tenants and 1 occupied by a resident manager, the applicable fraction would be 99/99 or 100 percent (*not* 99/100 or 99 percent). See IRS Ruling 92-61 ([Exhibit D2](#)) for details.

Buildings Having 4 or Fewer Units

Generally, in the case of any buildings having four (4) or fewer residential rental units, no unit in such building shall be treated as a low income unit if the units in such buildings are owned by any individual who occupies a residential unit in such building or any person who is related to such individual.

However, owner-occupied buildings acquired or rehabilitated pursuant to a development plan sponsored by a nonprofit organization or by a state or local government may be eligible. The ratio of all low-income units in the building cannot exceed eighty (80) percent. In the case of such building, any unit, which is not rented for ninety (90) days or more, shall be treated as occupied by the owner of the building as of the first day it is not rented. (Section 42(i)(3)(E))

Building Identification Number (BIN)

This number is assigned to each building in a project that received an allocation of tax credits. An owner/agent can check Part I of the Form 8609 to ascertain the BIN the Agency assigned to a tax credit building (See [Exhibit E1](#)).

Compliance Period

For projects that received a tax credit allocation prior to January 1, 1990, the compliance period is fifteen (15) years. Projects receiving a tax credit allocation after January 1, 1990 must comply with the eligibility requirements for a minimum term of fifteen (15) years and an extended-use period of fifteen (15) years. This thirty (30) year affordability period is stipulated within the recorded Deed of Easement and Restrictive Covenant.

Projects that received a tax credit allocation from 1994 and later may have compliance periods and extended-use periods that are longer than fifteen years. This means that the period of affordability may run beyond thirty (30) years.

The compliance period begins with the first taxable year of the credit period, which is the year the project places in service or the following year.

Credit Period

The credit period is the period of ten (10) taxable years beginning with the taxable year in which the building is placed in service. Or, if the owner made the election (on the Form 8609) to begin the credit period in the following taxable year, the credit period is the period of ten (10) taxable years beginning with the following taxable year. *(It is recommended that an owner seek professional guidance (from their lawyer and accountant) to determine when the first year of the credit period should be.)*

Deep Rent Skewing

For projects that made this election on the Form 8609 (See [Exhibit E1](#)), at least 15 percent of the units must be both rent restricted and occupied by individuals whose income is 40 percent or less of the area median gross income. This is in addition to meeting the minimum set-aside.

Form 8609

This form (See [Exhibit E1](#)) is the official IRS form which shows the tax credits that a building has been allocated by the Agency. Part I of the form is completed by the Agency and filed with the IRS. The Agency then mails a copy of the form to the owner. The owner completes Part II of the form and files the completed form with the Internal Revenue Service for the first year of the credit period.

The owner then has thirty (30) days from the filing date to send the Agency's compliance staff a copy with Parts I and II complete. The Form 8609 must be retained with the project files.

Form 8823

This form (See [Exhibit E2](#)) is the official IRS form that must be filed by the Agency when a

building has been found out of compliance. It is filed by the Agency no later than forty-five (45) days from the end of the correction period.

Form 8611

This form (See [Exhibit E3](#)) must be filed by the taxpayer when the IRS as a result of noncompliance must recapture credits.

Full-time Students

In general, students are not LIHTC eligible. the regulation states that "in no case is a unit considered to be occupied by low-income individuals if all of the occupants are full-time students."

Defining "Student"

IRC §152(f)(2) defines, in part, a "student" as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170(b)(1)(A)(ii) *or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in IR §170(b)(1)(A)(ii) or of a state or political subdivision of a state.* Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.

An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term "educational organization" includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses.

Exceptions

1. by an individual who is:

I. a student receiving assistance under Title IV of the Social Security Act,

II. *a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act2,* or

III. a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws.

2. Entirely by full-time students if such students are

I. *single parents and their children and such parents are not dependents (as defined in IRC 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children,* or

II. married and file a joint return.

In the case of a single parent with children, the legislative history explains that none of the tenants (parent or children) can be a dependent of a third party. See S. Rpt. No. 103-37, 103d Cong., 1st Sess. 74 (1993).

A very important issue is that students are not "grandfathered." If an existing household becomes an ineligible full-time student household, the tenant must vacate the unit. Owners must make sure that the lease addresses the issue of ineligibility of full-time student households, and the owner has the option of not renewing a resident's lease if the owner finds the resident to be ineligible after initially qualifying.

HOME Funds

For projects with HOME funds that received the nine (9) percent tax credit, 40 percent or more of the residential units must be both rent-restricted and occupied by individuals whose income is 50 percent or less of the area gross median income. This is in addition to meeting the minimum set-aside.

Key Lease Provisions

The Agency recommends that owners/managers insert the following list of provisions into their leases. Although these revisions are not required, they may be helpful to ensure tenant compliance with tax credit requirements.

1. Initial lease must have a minimum term of six months.
2. Explain that the building has low income housing tax credits and under that program all tenants must be income certified to live in the building. In addition, all tenants must be annually recertified.
3. Include a requirement that states that each tenant must comply with the income certification rules.
4. Include a provision that allows you to increase rents should the area gross median income limits increase, subject to thirty (30) day notice.
5. Explain that any tenant that lies or commits some act of fraud in the certification/recertification process may be evicted.
6. Explain that all heads of households are ultimately responsible for the action of the other members of their household.
7. Advise tenants to give notice of any change in income.

8. Advise tenants that illegal activities are not permitted in the building.
9. Require that the environment be quiet and peaceful to the tenants residing in the building and any disturbance would not be tolerated.
10. Explain that any violation of the lease may constitute grounds for eviction.
11. Annually advise tenants of the availability of child window guards.
12. Advise tenants regarding the maintenance and regulations of smoke detectors and carbon monoxide detectors.

Minimum Set Aside

At the time of application for the tax credit, the owner of the project must choose one of two minimum set-aside requirements. This election once memorialized within a Deed of Easement and Restrictive Covenant (which is filed by the Agency with the appropriate municipality or county) and once elected on the IRS Form 8609 (See [*Exhibit E1*](#)) (which has been filed with the IRS as well as with the Agency) is irrevocable. If the managing agent is unaware of which set-aside requirement must be met, he/she should contact the owner.

The set-aside is the *minimum* number of units that must be rent restricted and reserved for low income tenants in order for a building to be considered a qualified low income building. Pursuant to the Code, the set-aside options are:

1. 20% or more of the residential units are both rent-restricted and occupied by individuals whose income is 50% or less of the area median gross income as adjusted for family size; OR
2. 40% or more of the residential units are both rent-restricted and occupied by individuals whose income is 60% or less of the area median gross income as adjusted for family size.

Minimum Set-Aside Deadlines

For projects receiving an allocation between 1987 and 1990, the minimum set-aside must be met within twelve (12) months of the date the building was placed in service. For projects receiving credits in 1991 and later, the minimum set-aside must be met by December 31 of the year the project placed in service, if credits are to be claimed for that year. If the start of the credit period is deferred until the following year, the minimum set-aside must be met by December 31 of the following year.

Once the minimum set-aside is met, it must be maintained for the entire compliance period. In addition to meeting the minimum set-aside, you may also be required by your syndicates/investor to achieve a certain percentage of occupancy within a certain time frame. The Agency recommends that you consult your accountant and syndicates/investor with regard to this issue.

Noncompliance

Any violation of Section 42 of the Internal Revenue Code, IRS revenue procedures, revenue

rulings, letter rulings, notices, announcements, any applicable Treasury regulations and any applicable federal law as well as the Agency review requirements for monitoring compliance.

The Agency must monitor for compliance with Section 42 all buildings that received an allocation of tax credits. Any noncompliance identified by the Agency must be reported via Form 8823 to the IRS regardless of whether an owner corrects the noncompliance (See [Exhibit E2](#)).

Noncompliance Examples

Noncompliance may include, but is not limited to the following examples:

1. Failure to submit a completed Owners Certificate of Continuing Program Compliance and Tenant Information and when applicable the Annual Project Certification for Projects with Special Needs Component and Social Service Models by the Agency's deadline.
2. Failure to pay a compliance monitoring fee.
3. Violations of local and State health, safety and building codes.
4. Failure to certify tenants at move-in or recertify tenants annually.*
5. Failure to collect back-up documentation to support certifications/recertification*
6. Charging rents that exceed the maximum tax credit rent permitted.
7. Calculation errors, which could lead to accepting a tenant whose income, exceeded the maximum limit or charging too much rent.*
8. Failure to certify Section 8 tenants or failure to obtain information from the Public Housing Authority or the DCA office that provides the Section 8.
9. Failure to meet minimum set-aside by the required time frame and failure to maintain minimum-set-aside.
10. Failure to comply with the Agency's procedures for monitoring compliance.
11. Any violation of Section 42 of the IRS.

Nontransient Occupancy

A unit will not be treated as a low income unit if it is used on a transient basis. A unit is deemed to be used on a nontransient basis if the initial lease term is at least six (6) months. The initial six (6) month term can be followed by a month-to-month rental term. SROs are permitted to operate on a month to month (30 days) basis.

Nursing, Medical or Psychiatric Facilities

Facilities that provide regular nursing, medical or psychiatric care are not considered residential rental units and therefore do not qualify for tax credits.

* For residents residing in 100% tax credit properties, an initial certification shall be required at move-in, followed by a re-certification on the 1 year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to operate 100% affordable/tax credit. While a resident shall still be required to complete the Tenant income Certification and other forms on an annual basis, 3rd party verification of income shall no longer be required.

Recapture of Tax Credits

Non-compliance with tax credit statutes, rules or regulations may lead to recapture of the tax credit by the IRS with respect to the accelerated amount (one-third) claimed for all previous years. In other words, if a tax credit project is not maintained in compliance, no tax credit is available that year and previous years may be recaptured. *NOTE - Only the IRS can make a determination with regard to recapture of credits. The Agency's authority extends only insofar as reporting noncompliance to the IRS.*

Generally, recapture of tax credits applies if:

1. a tax credit building has been disposed of;
2. there is a decrease in the qualified basis of the building from one year to the next;
(A decrease in qualified basis may occur when there is an elimination of units or some common area that was approved into basis during the original calculation of the tax credit. For example, two low-income units are destroyed by fire or a community room has been eliminated. In order that the owner may receive the expected tax credit on an annual basis the value of the original units or common area must be restored within a reasonable amount of time. Should the cost to restore such changes exceed the value, the sponsor is responsible for same and cannot collect any additional tax credits beyond the original allocation. Should the owner choose not to restore the building he/she will be subject to recapture.)
3. the building no longer meets the minimum set-aside requirement, the gross rent requirement or the other requirements for the units which are set aside.

Generally, recapture of tax credits does *not* apply if:

1. the disposition of a building was done in accordance with Section 42(j)(6);
2. the decrease in qualified basis does not exceed the additions to qualified basis for which credits were allowable in years after the year the building was placed in service; or
3. an incident of noncompliance was corrected within the correction period or within a reasonable amount of time after the noncompliance *should have been* discovered.

NOTE - Tenants cannot be evicted in order to return projects to compliance. Owners wishing to determine how the amount of recapture is arrived at should review Section 42(j) of the Internal Revenue Code.

Residential Rental Units

In order for a unit to be considered a residential rental unit it must contain separate and complete facilities for living, eating, cooking and sanitation. SROs are not required to meet this requirement.

Social Service Model* (Does not apply to projects that received allocations prior to 1995).

Project sponsors who received an allocation and who agreed in their application to provide social services will be monitored to ensure compliance with their application. Prior to the owner receiving their copy of the 8609, they must document to the satisfaction of HMFA that the services are in place. The project must continue to maintain such social services to the tenants throughout the compliance period and must certify annually to the provision of those services (see [Exhibit B2](#)). Appropriate documentation evidencing that the services are available to the tenants must be maintained along with the other project records, and will be inspected as part of the on-site audit. Executed contracts with Social Service Providers must be maintained and copies of such contracts must be available if requested by NJHMFA. Examples of other documentation include executed leases (if services are provided on-site), evidence of hiring a social service coordinator, evidence of tenant utilization of services, etc.

Special Needs Populations* (Does not apply to projects that received allocations prior to 1995)

Project sponsors who received an allocation and who agreed in their application to reserve a specific percentage of the total units in the project for occupancy by a targeted special needs population and provide appropriate social services to the special needs tenants (the "special needs requirements"), will be monitored to ensure compliance with their application.

Prior to the owner receiving their copy of the 8609, they must document to the satisfaction of HMFA that the special needs requirements are in place. The project must continue to maintain the special needs requirements throughout the compliance period and must certify annually that they are in place (see [Exhibit B2](#)). Appropriate documentation evidencing that the special needs requirements are in place must be maintained along with the other project records, and will be inspected as part of the on-site audit. Executed contracts with Social Service Providers must be maintained and copies of such contracts must be available if requested by NJHMFA. Examples of other documentation include executed leases (if services are provided on-site), evidence of hiring a social service coordinator, evidence of tenant utilization of services, project advertising, etc.

As HMFA will monitor for compliance with regard to the special needs requirements (since project sponsors receive bonus points for special needs), owners must document and keep records of their marketing efforts (project advertising, written contact to appropriate special needs agencies/social service providers, etc.) and demonstrate to the satisfaction of HMFA that they fully intended to meet the special needs requirements. Although project sponsors are required to demonstrate that a market for the targeted population exists in the project's service area and then market the units to the targeted special needs population, there may be instances when there are no special needs tenants available to rent the units. For units set aside for special needs populations, if a qualified special needs tenant is not located within 60 days, the next available tenant from the project's waiting list may fill the unit provided the next comparably sized vacant unit shall be made available for a special needs tenant.

Suitability of Residential Units for Occupancy

Each building in a tax credit project must be suitable for occupancy, taking into account state, local health, safety and building codes. In addition, each building must have a Certificate of Compliance from the New Jersey Department of Community Affairs' (DCA) Bureau of Housing

Inspection stating that the building meets the "Regulations for Maintenance of Hotels and Multiple Dwellings". In the event a new construction project has not yet received the Certificate of Compliance, the building must be registered with DCA so that it will be inspected.

If state or local officials have cited the building for health, safety and/or building code violations, the owner of the building is responsible for correcting the violations. Uncorrected violations may render the building or low-income units unsuitable for occupancy. Such violations may be considered noncompliance by the Agency, which must be reported to the Internal Revenue Service.

Owners/managers should be aware and should comply with the Americans with Disabilities Act (ADA) and HUD Section 504 requirements.

Transitional Housing

A transitional housing unit, as defined under the Stewart B. McKinney Homeless Assistance Act, is deemed to be used on a nontransient basis if the unit contains sleeping accommodations, kitchen and bathroom facilities and is located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living within a 24 month period, and in which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing (Section 42 (i)(3)(B)(iii)).

Units for Use by General Public

Pursuant to IRS Regulation 1.42-9(b), a residential rental unit must be available for use by the general public in order for the unit to be eligible for tax credits (See also, U.S. Department of Housing & Urban Development Handbook 4350.3, or its successor, for the federal definition and criteria for "use by the general public"). Preference to certain classes of tenants does not violate the general public use requirement as long as they do not violate HUD policy regarding nondiscrimination. Examples of preferences that *do not violate* the general public use requirement are preferences to the elderly, persons with disabilities, the homeless and transitional housing for the homeless. Examples of preference that *do violate* the general public use requirement are as follows: a residential unit that is provided by an employer for its employees, a residential unit is provided to a specific group of people that are part of a social organization.

Owners are advised that the general public use requirement in the IRS regulations is not clear with regard to preferences for municipal or regional residents. The Agency advises owners to be aware of Federal and State Fair Housing laws with regard to this issue. It is strongly recommended that owners not give preference to municipal residents when marketing and renting units as such practice has been challenged and found by the Supreme Court of New Jersey to violate the State Fair Housing Act. If a preference for residents of the region (a "COAH-designated" housing region) is being used, owners should be aware that mandatory federal preferences set by HUD must be considered before a regional preference. If the owner of a tax credit project is found by a governmental agency or court to have violated any Federal or State Fair Housing laws in renting the project, the Agency will find the project out of compliance and report such circumstance to the IRS.

Vacant Units

When a unit becomes vacant which was formerly occupied by a low-income household, it may continue to be treated as occupied by a qualified low income tenant for the purposes of the set-aside requirement, provided that the apartment is ready to be occupied, that the owner demonstrates that reasonable attempts are made to rent the unit to qualified low-income households and that no other unit of comparable or smaller size in the project is rented to nonqualifying (non low income) individuals.

State Set-Aside Monitoring Procedures

The state set-aside requires that 10 percent or more of the residential units in the Project are both rent restricted and occupied by households whose income is 30 percent or less of AMGI. The selection of this state set-aside is irrevocable and is binding on the Project Owner and all successors in interest to the Project through the end of the extended use period.

Failure to meet set-aside will result in the owner being considered “not in good standing” if the noncompliance is not corrected. As long as an owner remains “not in good standing” they are ineligible to be part of the development team for any new tax credit awards. In addition, pursuant to N.J.A.C.5:80-33.26(c), NJHMFA may impose penalties for failure to comply with eligibility or point requirements, including but not limited to delay and/or non-issuance of the IRS Form 8609, imposition of financial penalties, a reduction in the allocated credit amount or the unilateral cancellation of an allocation. The Agency also has the right to enforce specific performance through the court system.

The gross rent charged by the owner/agent must comply with the owner's election of the State set-aside requirement, meaning that the gross rent must be affordable to households earning 30% of the area gross median income. The definition of area gross median income is based on the HUD methodology used for the Section 8 program of the U.S. Housing Act of 1937. Gross rent does not include any payment under Section 8 or any comparable rental assistance program with respect to such unit or the occupants. Gross rent includes an allowance for all utilities which will be paid by the household.

If a household's income rises above 30% of the AMGI then the next available unit in the project shall be rented to a household whose income is at or below 30% of the AMGI.

Owners must demonstrate that best efforts will be made to distribute the 30% units proportionately across all unit sizes.

If an owner cannot find a sufficient amount of households whose income is at or below 30% of the AMGI than he/she must demonstrate to the Agency that all reasonable attempts were made to market the units. Reasonable attempts shall include but are not limited to the following:

1. Written marketing plan and procedures.
2. Waiting list.
3. Copies of advertising from newspapers.
4. Outreach efforts to social service agencies and non-profit groups.

If after 60 days a household whose income is at or below 30% of the AMGI cannot be found then the vacant unit may be rented to a household whose income is at or below 60% of the AMGI.

CHAPTER 3

DETERMINING INCOME AND CALCULATING RENT

Pursuant to IRS Regulation 1.42-5(b)(vii), tenant income must be calculated in a manner consistent with the determination of annual median gross income under Section 8 of the United States Housing Act of 1937 (*See also Exhibit D11*), not in accordance with the determination of gross income for federal income tax liability. This section of the manual outlines how annual income is calculated to determine tenant income eligibility, which is required prior to the tenant residing in a low income housing tax credit unit and every year thereafter for the compliance period and in the case of projects that have a Deed of Easement and Restricted Covenant, for the Extended Use Period.

In accordance with Section 8 regulations, annual income is the anticipated gross income from all sources to be received by the family head and spouse (even if temporarily absent) and by each adult individual member of the family (individuals 18 years and older) during the 12 months following the date of the certification or recertification. *Please note that the tax credit program does not consider adjusted income which is permitted under the Section 8 program. Adjusted income is the deduction of allowances, such as dependent, child care handicapped/disability, medical or elderly, from the gross income.*

DETERMINING INCOME AND CALCULATING RENT

Introduction

- A. Owners must determine the amount of a family's income before the family is allowed to move into assisted housing and at least annually thereafter. The amount of assistance paid on behalf of the family is calculated using the family's annual income less allowable deductions. HUD program regulations specify the types and amounts of income and deductions to be included in the calculation of annual and adjusted income.
- B. Although the definitions of annual and adjusted income used for the programs covered in this handbook have some similarities with rules used by the U.S. Internal Revenue Service (IRS), the tax rules are different from the HUD program rules.
- C. The most frequent errors encountered in reviews of annual and adjusted income determinations in tenant files fall in three categories:
 - 1. Applicants and tenants failing to fully disclose income information;
 - 2. Errors in identifying required income exclusions; and
 - 3. Incorrect calculations of deductions often resulting from failure to obtain third-party verification.

Careful interviewing and thorough verification can minimize the occurrence of these errors

D. **Chapter 3** is organized as follows:

- **Section 1: Determining Annual Income** discusses the requirements regarding annual income and the procedure for calculating a family’s annual income when determining eligibility. This section also includes guidance on determining income from assets.
- **Section 2: Verification** presents the requirements for verifying information provided by applicants and tenants related to their eligibility.
- **Section 3: Calculating Tenant Rent** discusses the methods for calculating the tenant’s portion of rent under the different programs covered by this handbook.

Key Terms

- A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed below and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.
- B. The terms “disability” and “persons with disabilities” are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.
 1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.
 2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Key Terms

- Adjusted income
- Annual income
- Assets
- Assistance payment
- Assisted rent
- Assisted tenant
- Basic rent
- Co-head of household
- Contract rent
- Dependent
- Extremely low-income family
- Foster adult
- Foster children
- Full-time student
- Gross rent
- Hardship exemption
- Head of household
- Housing assistance payment (HAP)
- Income limit

- Live-in aide
- Low-income family
- Market rent
- Minimum rent
- Operating rent
- Project Assistance Contract (PAC)
- PRAC Operating Rent
- Project Rental Assistance Contract (PRAC)
- Project assistance payment
- Project rental assistance payment
- Tenant rent
- Total tenant payment
- Unearned income
- Utility allowance
- Utility reimbursement
- Very low-income family
- Welfare assistance
- Welfare rent

Section 1: Determining Annual Income

Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 1: Determining Annual Income. The citation and its title are listed below.

- 24 CFR 5.609 Annual Income

Key Requirements

- A. Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:
 1. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or
 2. All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.
- B. Annual income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1, Income Inclusions and Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and *Federal Register* notices.
- C. Annual income includes amounts derived (during the 12-month period) from assets to which any member of the family has access.

Methods for Projecting and Calculating Annual Income

- A. The requirements for determining whether a family is eligible for assistance, and the amount of rent the family will pay, require the owner to project or estimate the annual income that the family expects to receive. There are several ways to make this projection. The following are two acceptable methods for calculating the annual income anticipated for the coming year:
 1. Generally the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing *current* income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months. If changes occur later in the year, an interim recertification can be conducted to change the family's rent.
 2. If information is available on changes expected to occur during the year, use that information to determine the total *anticipated* income from all known sources during the year**. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the owner may add the total income for the months before, and the total for the months after the increase**.

Example – Calculating Anticipated Annual Income

A teacher's assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$600 per month. The owner may calculate the family's income using either of the following two methods:

1. Calculate annual income based on current income: \$15,600 ($\$1,300 \times 12$ months).

The owner would then conduct an interim recertification at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of \$7,200 ($\600×12 months). The owner would conduct another interim recertification when the tenant returns to the nine-month job.

2. Calculate annual income based on anticipated changes through the year:

\$11,700 ($\$1,300 \times 9$ months)

+ 1,800 ($\$600 \times 3$ months)

\$13,500

Using the second method, the owner would not conduct an interim re-examination at the end of the school year. In order to use this method effectively, history of income from all sources in prior years should be available.

- B. Once all sources of income are known and verified, owners must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

1. Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);
2. Weekly wages by 52;
3. Bi-weekly wages (paid every other week) by 26;
4. Semi-monthly wages (paid twice each month) by 24; and
5. Monthly wages by 12.

To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

Example – Anticipated Increase in Hourly Rate

February 1 Certification effective date

\$7.50/hour Current hourly rate

\$8.00/hour New rate to be effective March 15

(40 hours per week x 52 weeks = 2,080 hours per year)

February 1 through March 15 = 6 weeks

6 weeks x 40 hours = 240 hours

2,080 hours minus 240 hours = 1,840 hours

(check: 240 hours + 1,840 hours = 2,080 hours)

Annual Income is calculated as follows:

240 hours x \$7.50 =	\$1,800
\$1,840 hours x \$8.00 =	\$14,720
Annual Income	\$16,520

C. Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. In many of these challenging situations, midyear or interim recertifications may be required to reflect changing circumstances. Some examples of approaches to more complex situations are provided below.

Examples – Irregular Employment Income

Seasonal work. Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.

Sporadic work. Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, it will be best to exclude her employment income and remind her that she must return for an interim recertification when she resumes work.

Examples – Irregular Employment Income

Sporadic work. Sam Daniels receives social security disability. He reports that he works as a handyman periodically. He cannot remember when or how often he worked last year: he says it was a couple of times. Sam's earnings appear to fit into the category of nonrecurring, sporadic

income that is not included in annual income. Tell Sam that his earnings are not being included in annual income this year, but he must report to the owner any regular work or steady jobs he takes.

Self-employment income. Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. With no other information available, the owner will use the income reflected on Mary's copy of her form 1040 as her annual income.

Calculating Income—Elements of Annual Income

A. Income of Adults and Dependents

1. Example below summarizes whose income is counted.
2. Adults. Count the annual income of the head, spouse or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

NOTE: If an emancipated minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled in accordance with subparagraph 3 below.

3. Dependents. A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student

The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

- a. *Earned* income of minors (family members under 18) is not counted.
- b. Benefits or other *unearned* income of minors is counted.

Example - Whose Income is Counted?

	Employment Income	Other Income (including income from assets)
Members		
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult *(including foster adult)*	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
Foster child under 18	No	Yes
Nonmembers		
Live-in aide	No	No

NOTE: The earned income of a full-time student 18years old or older who is a dependent is excluded to the extent that it exceeds \$480.

- c. When more than one family shares custody of a child and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.
- d. When full-time students who are 18 years of age or older are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of \$480 per year for full-time students, age 18 or older, who are not the head of the family or spouse or co-head. If the income is less than \$480 annually, count all the income. If the annual income exceeds \$480, count \$480 and exclude the amount that exceeds \$480.
- e. The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.
- f. All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or cohead.
- g. Payments received by the family for the care of foster children or foster adults are *not* counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.
- h. Adoption assistance payments in excess of \$480 are not counted.

B. Income of Temporarily Absent Family Members

1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.
2. If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and the HUD50059.
3. A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.
 - a. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family.
 - b. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

Examples – Income of Temporarily Absent Family Members

- John Chouse works as an accountant. However, he suffers from a disability that periodically requires lengthy stays at a rehabilitation center. When he is confined to the rehabilitation center, he receives disability payments equaling 80% of his usual income. During the time he is not in the unit, he will continue to be considered a family member. The owner will conduct an interim recertification. Even though he is not currently in the unit, his total disability income will be counted as part of the family's annual income.

- Mirna Martinez accepts temporary employment in another location and needs a portion of her income to cover living expenses in the new location. The full amount of the income must be included in annual income.
- Charlotte Paul is on active military duty. Her permanent residence is her parents' assisted unit where her husband and children live. Charlotte is not currently exposed to hostile fire. Therefore, because her spouse and children are in the assisted unit, her military pay must be included in annual income. (If her dependents or spouse were not in the unit, she would not be considered a family member and her income would not be included in annual income.)

C. *Deployment of Military Personnel to Active Duty

Owners are encouraged to be as lenient as responsibly possible to support affected households in situation where persons are called to active duty in the Armed Forces. Specific actions that owners should undertake to support military households include, but are not limited to:*

1. *Allow a guardian to move into the assisted unit on a temporary basis to provide care for any dependents the military person leaves in the unit. Income of the guardian temporarily living in the unit for this purpose is not counted as income.
2. Allow a tenant living in an assisted unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis, as long as the head and/or co-head of household continues to serve in active duty. Income of the child (e.g., SSI benefits, military benefits) is not counted as income of the person providing the care.
3. Exclude from annual income special pay received by a household member serving in the Armed Services who is exposed to hostile fire (see Exhibit 5-1).
4. Give consideration for any case involving delayed payment of tenant rent. Determine whether it is appropriate to accept a late payment.
5. Allow the assistance payment and the lease to remain in effect for a reasonable period of time (depending on the length of deployment) beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-591, even though the adult members of the military family are temporarily absent from the assisted unit.*

D. Income of Permanently Confined Family Members

1. An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted.
 - a. *Include* the individual as a family member and the income and allowable deductions related to the medical care of the permanently confined individual are counted; or
 - b. *Exclude* the individual as a family member and the income and allowances based on the medical care of the permanently confined individual are not counted.
2. If the family elects to include the permanently confined member, the individual is listed on the

HUD-50059 as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the HUD-50059. If the owner determines the confined member is unable to sign the HUD-50059, the owner must document the file why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the HUD-50059.**

E. Educational Scholarships or Grants

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income **except for students receiving Section 8 assistance.** This is true whether the assistance is paid to the student or directly to the educational institution

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

F. Alimony or Child Support

Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made *and* that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

1. The owner may accept printouts from the court or agency responsible for enforcing support payments, or other evidence indicating the frequency and amount of support payments actually received.
2. Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as "pass-through" payments. These amounts must be counted as annual income.
3. When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

G. Regular Cash Contributions and Gifts

1. Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility payments paid on behalf of the

family, and other cash or noncash contributions provided on a regular basis.

Examples – Regular Cash Contributions

- The father of a young single parent pays her monthly utility bills. On average he provides \$100 each month. The \$100 per month must be included in the family's annual income.
- The daughter of an elderly tenant pays her mother's \$175 share of rent each month. The \$175 value must be included in the tenant's annual income.

2. Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income.

3. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

H. Income from a Business

When calculating annual income, owners must include the net income from operation of a business or profession including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis.

1. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.
2. When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, other expenses for business expansion, or outlays for capital improvements.
3. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.

I. **Periodic Social Security Payments

Count the gross amount, before deductions for Medicare, etc., of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.**

J. Adjustments for Prior Overpayment of Benefits

If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF, or unemployment benefits), count the amount that is actually provided after the adjustment.

Example – Adjustment for Prior Overpayment of Benefits

Lee Park's social security payment of \$250 per month is being reduced by \$25 per month for a period of six months to make up for a prior overpayment. Count his social security income as \$225 per month for the next six months and as \$250 per month for the remaining six months.

K. Public Assistance Income in As-Paid Localities

1. Special calculations of public assistance income are required for “as-paid” state, county, or local public assistance programs. An “as-paid” system is one:
 - a. In which the family receives an amount from a public agency specifically for shelter and utilities; and
 - b. In which the amount is adjusted based upon the actual amount the family pays for shelter and utilities.
2. The public assistance amount specifically designated for rent and utilities is called the “welfare rent.”
3. To determine annual income for public assistance recipients in “as-paid” localities, include the following:
 - a. The amount of the family’s grant for other than shelter and utilities; and
 - b. The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.
4. Each as-paid locality works somewhat differently, and many are subject to court-ordered modifications to the basic policy. Owners should discuss how the rules are applied with the HUD Field Office.

Example – Welfare Income in “As Paid” Localities

At application, a family’s welfare grant is \$300, which includes \$125 for basic needs and \$175 for shelter and utilities (based upon where the family is now living). However, the maximum the welfare agency could allow for shelter and utilities for this size family is \$190.

Count the following as income:

\$125 Amount family receives for basic needs

\$190 Maximum for shelter and utilities

\$315 Monthly public assistance income

L. Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits

1. The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. (See subparagraph O below for information on the withdrawal of cash or assets from an investment.) Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.

2. Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income (see paragraph 5.7 G.4).

Example – Withdrawals from IRAs or 401K Accounts

Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn \$2,000 for a trip with his children. The withdrawal is not a periodic payment and is not counted as income.

3. If the tenant is receiving long-term care insurance payments, any payments in excess of \$180 per day must be counted toward the gross annual income.
(NOTE: Payment of long-term care insurance premiums are an eligible medical expense – see paragraph 5-10 D.8.k.)
4. *Federal Government/Uniformed Services pension funds paid to a former spouse.*

Federal Government/Uniformed Services pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee is counted as income for a tenant/applicant receiving such funds.

Example

Joan Carson is a retired Federal government employee receiving a retirement pension. She is also the recipient of Section 8 housing assistance and involved in a divorce proceeding. In settling the assets of the marriage between Mrs. Carson and her former husband, the court ordered that one half of her pension be paid directly to her former husband in the amount of \$20,000. The court provided OPM with clear, specific and express instructions acceptable for OPM to process the payment to Mrs. Carson's former husband. OPM authorized the payment of pension benefits to Mrs. Carson's former husband in the amount of \$20,000. The \$20,000 represents an asset disposed of as a result of a court decree. At the interim reexamination of her income, Mrs. Carson indicated a change in her income due to the court ordered payment of pension benefits to her former husband. The PHA requested that Mrs. Carson provide a copy of her statement from OPM evidencing the payment of pension benefits to her (her statement reflected the line item payment to her former husband due to the court order). That portion of the pension paid to her former husband no longer belongs to Mrs. Carson and is not counted as income.

The OPM is responsible for handling court orders (any judgments or property settlements issued by or approved by any court of any state, the District of Columbia, the

Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands in connection with the divorce, annulment of marriage, or legal separation of a Federal government employee or retiree) affecting current and retired Federal government employees. See 5 C.F.R. § 838.103. OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees that award a portion of the former Federal government employee's retirement benefits. Id. at § 838.101(a)(1). State courts ordering a judgment or property settlement in connection with divorce, annulment of marriage, or legal separation have the responsibility of issuing clear, specific, and express instructions to OPM with regards to providing benefits to former spouses. Id. at § 838.122. In response to instructions from state courts, OPM will authorize payments to the former spouses. Id. at § 838.121. Once the payments have been authorized by OPM, the reduced pension amount paid to the retired Federal employee (the tenant/applicant) will be reflected in the tenant's/applicant's statement from OPM. Former spouses of Federal government employees receiving court ordered pension benefits are provided a Form-1099 reflecting pension benefits received from the retired Federal government employee. In verifying the income of tenants/applicants, owners should require that tenants/applicants provide any copies of statements from OPM verifying pension benefits (including any reductions pursuant to a court order, decree or court-approved property settlement agreement), and any evidence of survivor benefits, pensions or annuities received from retired Federal government employees including, but not limited to, a Form-1099. (See Paragraph 5-7.G.5 for more information on the treatment of income from Federal government pensions.)

5. *Other State, local government, social security or private pensions paid to a former spouse.

Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as 4, above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.*

M. Income from Training Programs

1. Amounts received under HUD-funded training programs are excluded from annual income.

2. Incremental earnings and benefits received by any family member due to participation in qualifying state or local employment training programs are excluded. Income from training programs not affiliated with a local government, and income from the training of a family member resident to serve on the management staff, is also excluded.

- a. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion

- b. Training income may be excluded only for the period during which the family member participates in the employment training program.
 - c. Exclusions include stipends, wages, transportation or child care payments, or reimbursements.
 - d. Income received as compensation for employment is excluded only if the employment is a component of a job training program. Once training is completed, the employment income becomes income that is counted.
 - e. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment, are not excluded.
3. Owners may ask to use project funds or funds from the Residual Receipts account to underwrite all or a portion of the cost of developing, maintaining, and managing a job training program for project residents if funds are available.
- a. The Field Office will make the determination if the job training program may be approved, and if project funds are sufficient to fund the job training program and maintain the physical and financial integrity of the project. Job training programs may be either on-site at the project or off-site. For example, job training programs that have partnerships with local colleges, community based organizations, or local business, may have in-house job training programs designed for project residents.
 - b. Funds that an owner may choose to use to underwrite a job training program may include Section 8 funds, Community Development Block Grant funds, or housing authority funds. These funds may be used to cover the costs of various components of a job training program, including course materials, computer software, computer hardware, or personnel costs. Also, contractors and subcontractors, in connection with work performed under a Flexible Subsidy contract, may elect to hire project residents to perform certain skills required under the contract. If the employment of the project residents was pursuant to an apprenticeship program, this could constitute a training program using HUD funds, and income received by the tenants in the apprenticeship program will qualify as an exclusion from income.

N. Resident Services Stipends

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management.

1. If the resident stipend exceeds \$200 per month, owners must include the entire amount in annual income.
2. If the resident stipend is \$200 or less per month, owners must exclude the resident services stipend from annual income.

O. Income Received by a Resident of an Intermediate Care Facility for the Mentally Retarded or for the Developmentally Disabled (ICF/MR or ICF/DD) and Assisted Living Units in Elderly Projects.

1. An intermediate care facility is a group home for mentally retarded or developmentally disabled individuals (ICF/MR or ICF/DD). The term “intermediate care facility” is one used by state mental health departments for group homes serving these residents.
2. Assisted living units are units in projects developed for elderly residents with project-based assistance that have been converted to assisted living units.
3. The local agency responsible for Medicaid provides funds directly to group home operators and assisted living providers for services.
4. Annual income at an ICF/MR, ICF/DD, or assisted living unit must include:
 - a. The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus
 - b. All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations (see Exhibit 5-1). Examples of other sources of income include wages, pensions, income from sheltered workshops, income from a trust, or other interest income.
 - c. The personal allowance of an individual residing in an ICF/MR or ICF/DD is not included in annual income. If the owner is unable to determine the actual amount of the personal allowance, use \$30.
5. Annual income does not include the enhanced benefit portion of the SSI that is provided to pay for services. In some instances, a resident’s SSI income may be reduced between annual recertifications if the resident’s earnings exceed a specified amount. If this happens, the resident may request an interim recertification.

P. Withdrawal of Cash or Assets from an Investment

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. **Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. See Paragraph 5-7 G.2 for guidance on calculating income from an asset.**

Q. Lump Sum Payments Counted as Income

1. Generally, lump sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income.
2. When social security or SSI benefit income is paid in a lump sum as a result of deferred periodic payments, that amount is *excluded* from annual income.
3. Settlement payments from claim disputes over welfare, unemployment, or similar benefits may be counted as assets, but lump sum payments caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income.

How lump sum payments for delayed start of benefits are counted depends upon the following:

- When the family reports the change;
- When an interim re-examination is conducted; and
- Whether the family's income increases or decreases as a result.

A lump sum payment resulting from delayed benefit income may be treated in either of the two ways illustrated in the example shown below.

- Lottery winnings paid in one payment are treated as assets. Lottery winnings *paid in periodic payments* must be counted as income.

Treatment of Delayed Benefit Payments Received in a Lump Sum

Option A: The owner processes one interim re-examination immediately effective 11/1 and a second interim after unemployment benefits are known.

	<u>10/1</u>	<u>11/1</u>	<u>12/1</u>	<u>1/1</u>	<u>2/1</u>
Monthly gross income	800	*0	*0	492**	492**
Monthly allowances (three minors x 480 / 12 months)	120	-	-	120	120
Monthly adjusted income	680	0	0	372	372
Total tenant payment (TTP)	204	25	25	25***	112***

* The family's income is calculated at \$0/month beginning November 1, continuing until benefits actually begin and new income is calculated. TTP is set at the minimum rent.

** Family's actual income for 1/1 is \$100/week x 52 weeks = \$5,200 / 12 = \$433.

However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the \$700 lump sum payment), the annual income to be used in calculating monthly gross income should be as follows:

\$100/week benefit x 52 weeks = \$5,200 + \$700 lump sum payment = \$5,900 annual gross income/12 = \$492.

*** Increased rent does not start until 2/1 in order to give the family notice of rent increase.

Option B: The owner processes one interim re-examination after unemployment benefits are known.

	<u>10/1</u>	<u>11/1</u>	<u>12/1</u>	<u>1/1</u>	<u>2/1</u>
Monthly gross income	800	0/800*	0/800*	433*	433*
Monthly allowances (three minors x 480 / 12 Months)	120	120	120	120	120
Monthly adjusted income	680	0/680	0/680	313	313
Total tenant payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent credit (204 - 94=)	-	110	110	-	-

* Family's actual income for 11/1 and 12/1 is zero, but because the owner does not process an interim re-examination, the family's TTP continues to be calculated using \$800 as monthly gross income. Beginning 1/1, monthly gross income is known to be \$100/week, or \$433/month.

** The lump sum payment is taken into account by making the recertification retroactive to 11/1.

Annual income is calculated as $\$5,200 / 12 = \433 monthly gross income.

*** TTP for November and December recalculated as \$433 monthly gross income and \$313 monthly adjusted income $\times .30 = 94$ with credit or refund to family of \$110/month for each of these two months for difference between TTP paid of \$204 and recalculated TTP of \$94.

R. Exclusions from Income

1. Regulations for the multifamily subsidized housing programs covered by this handbook specifically exclude certain types of income from annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for owners to focus specifically on the HUD program requirements regarding annual income.

2. Among the items that are excluded from annual income are the value of food provided through:

- a. The Meals on Wheels program, food stamps, or other programs that provide food for the needy;
- b. Groceries provided by persons not living in the household; and
- c. Amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).

Examples – Income Exclusions

- The Value of Food Provided through the Meals on Wheels Program or Other Programs Providing Food for the Needy. Jack Love receives a hot lunch each day during the week in the community room and an evening meal in his apartment. One meal is provided through the Meals on Wheels program. A local church provides the other. The value of the meals he receives is not counted as income.
 - Groceries provided by persons not living in the household. Carrie Sue Colby's mother purchases and delivers groceries each week for Carrie Sue and her two year old. The value of these groceries is not counted as income despite the fact that these are a regular contribution or gift.
 - Amounts Received Under WIC or the School Lunch Act. Lydia Jeffries' two children receive a free breakfast and reduced priced lunches at school every day through the Special Supplemental Food Program for Women, Infants and Children (WIC). The value of this food is not counted as income.
3. Some additional examples of income that is excluded from the calculation of annual income follow:

- Resident service stipends. Rich Fuller receives \$50 a month for distributing flyers for management. This amount is excluded from annual income.
- Deferred periodic payments of social security benefits. Germain Johnson received \$32,000 in deferred social security benefits following a lengthy eligibility dispute. This delayed payment of social security benefits is treated as an asset, not as income.
- Income from training programs. Jennifer Jones is participating in a qualified state-supported employment training program every afternoon to learn improved computer skills. Each morning, she continues her regular job as a typist. The \$250 a week she receives as a part-time typist is included in annual income. The \$150 a week she receives for participation in the training program is excluded in annual income.
- Earned Income Tax Credit refund payments. Mary Frances Jackson is eligible for an earned income tax credit. She receives payments from her employer each quarter because of the tax credit. These payments are excluded in annual income.

Calculating Income from Assets

Annual income includes amounts derived from assets to which family members have access.

A. What is Considered to Be an Asset?

1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the *income* from that asset.
2. Some tenants have assets that are not earning interest. A quantity of money under a mattress is an asset: it is a thing of value that could be used to the benefit of the tenant, but under the mattress it is not producing income.
3. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset. Exhibit 5-2 summarizes the items that are considered assets and those that are not.

B. Determining Income from Assets

Note: For families receiving only BMIR assistance, it is not necessary to determine whether family assets exceed \$5,000. The rule for imputing income from assets does not apply to the BMIR program.

1. The calculation to determine the amount of income from assets to include in annual income considers both of the following:
 - a. The total cash value of the family's assets; and
 - b. The amount of income those assets are earning or could earn.
2. The rule for calculating income from assets differs depending on whether the total cash value of family assets is \$5,000 or less, or is more than \$5,000.

C. Determining the Total Cash Value of Family Assets

1. To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total “cash value” of family assets exceeds \$5,000.
 - a. The “cash value” of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:
 - (1) Penalties for premature withdrawal;
 - (2) Broker and legal fees; and
 - (3) Settlement costs for real estate transactions.

The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.

Example – Calculating the Cash Value of an Asset

A family has a certificate of deposit (CD) in the amount of \$5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest.

$\$5,000 \times 0.04 = \200 in annual income
 $\$200 / 12 \text{ months} = \16.67 interest per month
 $\$16.67 \times 3 \text{ months} = \50.01
 $\$5,000 - \$50 = \$4,950$ cash value of CD

- b. It is essential to note that a family is not required to convert an asset to cash. Determining the cash value of the asset is done simply as a calculation by the owner because it is a required step when determining income from assets under program requirements.

D. Assets Owned Jointly

1. If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners.
2. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual’s name, but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.
3. Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

Example – Determining the Cash Value of an Asset

The “cash value” of an asset is the amount a family would receive if the family turned a noncash asset into cash.

The cash value is the market value—or the amount another person would pay to acquire the asset—less the cost to turn the asset into cash.

If a family owns real estate, it may be necessary to consider the family’s equity in the property as well as the expense to sell the property.

To determine the family’s equity, subtract amounts owed on the property from its market value:

$$\begin{array}{r} \text{Market value} \\ - \text{Mortgage amount owed} \\ \hline \text{Equity in the property} \end{array}$$

Calculate the cash value by subtracting the expense of selling the property:

$$\begin{array}{r} \text{Equity} \\ - \text{Expense of selling} \\ \hline \text{Cash Value} \end{array}$$

Juanita Player owns a rental house. The market value is \$100,000. She owes \$60,000. The cost to dispose of this house would be \$8,000. The owner would determine the cash value as follows:

Market Value	\$100,000
Mortgage amount	<u>-60,000</u>
	40,000

Cost of disposing of the asset (real estate commission, and Other costs of sale)	<u>-8,000</u>
CASH VALUE	\$32,000

- a. In some instances, but not all, knowing whose social security number is connected with the asset may help in identifying ownership. Owners should be aware that there are many situations in which a social security number connected with an asset does not indicate ownership and other situations where there is ownership without connection to a social security number.
- b. Determining who has contributed to an asset or who is paying taxes on the asset may assist in identifying ownership.

Examples – Jointly Owned Assets

- Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50% of the account.

- Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.

E. Calculating Income from Assets When Assets Total \$5,000 or Less

If the total cash value of all the family's assets is \$5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.

F. Calculating Income from Assets When Assets Exceed \$5,000

1. When net family assets are more than \$5,000, annual income includes the greater of the following:
 - a. Actual income from assets; or
 - b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called *imputed* income from assets. The passbook rate is currently set at 2%.
2. To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the "imputed income" from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

Example – Use Actual Income from Assets When Total Net Family Assets are \$5,000 or less

Type of Asset	Cash Value	Actual Yearly Income
<i>Certificate of Deposit</i> \$1,000 withdrawal fee \$50 interest @ 4%	\$950	\$40
Savings Account \$500 interest @ 2.5%	\$500	\$13
Stock \$300 Not paying dividends	\$300	0
Total	\$1,750	\$53

The total cash value of the family's assets is \$1,750. Therefore, the amount that is added to annual income as income from assets is the actual income earned or \$53.

Example – Imputed Income from Assets

“Imputed” means “attributed” or “assigned.” Imputing income from assets is “assigning” an amount of income solely for the sake of the annual income calculation. The imputed income is not real income.

For example, money under a mattress is not earning income. If the money were put in a savings account it would earn interest. Imputed income from such an asset is the interest the money would earn if it were put in a saving account.

A family with cash under a mattress is not required to put the cash in a savings account; but when the owner is calculating income for a family with more than \$5,000 in assets, the owner must assign an amount that cash would earn if it were in a savings account.

Example – Determining Income from Assets When Net Family Assets Exceed \$5,000

Type of Asset	Cash Value	Actual Yearly Income
Checking Account (non-Interest bearing)	\$455	\$0
Savings Account (interest at 2.5%)	\$6,000	\$150
Stocks (not paying dividends this year)	\$3,000	\$0
Total	\$9,455	\$150

Total cash value of assets is greater than \$5,000. Therefore, it is necessary to compare the actual income from assets to the imputed income from assets.

The total cash value of assets (\$9,455) is multiplied by 2% to determine the imputed income from assets.

$$.02 \times \$9,455 = \$189$$

\$189 is greater than the actual income from assets (\$150). In this case, therefore, the owner will add \$189 to the annual income calculation as income from assets.

G. Calculating Income from Assets - Specific Types of Assets

1. Trusts.

a. Explanation of trusts.

(1) A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Generally, the assets are invested for the benefit of the beneficiaries.

(2) Trusts may be revocable or nonrevocable. A revocable trust is a trust that the creator

of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account. When the creator sets up a nonrevocable trust, the creator has no access to the funds in the account.

(3) The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., the beneficiary's 21st birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.

(4) The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

b. How to treat trusts.

(1) The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.

(2) Revocable trusts. If any member of the tenant family has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.

Example – A Trust Accessible to Family Members

Assez Charaf lives alone. He has placed \$20,000 in trust to his grandson to be available to the grandson upon the death of Assez. The trust is revocable, that is, Assez has control of the principal and interest in the account and can amend the trust or remove the funds at any time. In calculating Assez's income, the owner will add the \$20,000 to Assez's net family assets and the actual income received on the trust to actual income from assets.

(3) Nonrevocable trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.

If only the income (and none of the principal) from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.

(4) Nonrevocable trust as an asset disposed of for less than fair market value. If a tenant sets up a nonrevocable trust for the benefit of another person while residing in assisted housing, the trust is considered an asset disposed of for less than fair market value (see subparagraph G.6 below).

– If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

Example – Nonrevocable Trust As an Asset Disposed of for Less Than Fair Market Value

Sarah Gordy placed \$100,000 in a nonrevocable trust for her grandson. Last year, the trust produced \$8,000, which was reinvested into the trust.

The trust is treated as an asset disposed of for less than fair market value for two years. (See paragraph 5.7 G.6.) No actual income from the trust is included in Sarah's annual income, but the value of the asset when it was given away, \$100,000, is included in net family assets for two years from the date the trust was established.

– Nonrevocable trust distributing income. When a tenant places an asset in a nonrevocable trust but continues to receive income from the trust, the income is added to annual income *and* the trust is counted as an asset disposed of for less than market value for two years. Following the two-year period, the owner will count only the actual income distributed from the trust to the tenant.

Example – Nonrevocable Trust Distributing Income to the Creator/Tenant

Reggie Bouchard has established a nonrevocable trust in the amount of \$35,000 that no one in the tenant family controls. Income from the trust is paid to Reggie. Last year, he received \$3,500.

The owner will count Reggie's actual anticipated income from the trust in next year's annual income.

Because the asset was disposed of for less than fair market value (see paragraph 5.7 G.6), the value of the asset given away, \$35,000, is counted as an asset disposed of for less than fair market value for two years.

(5) Payment of principal from a trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.

Example – Payment of Principal Amounts from a Trust

Jared Leland receives funds from a nonrevocable trust established by his parents for his support. Last year he received \$18,000 from the trust. The attorney managing the trust reported that \$3,500 of the funds distributed was interest income and \$14,500 was from principal. Jared receives a payment of \$1,500 each month (an amount that includes both principal and interest from the trust).

The owner will count the entire \$18,000 Jared received as annual income.

c. Special needs trusts.

A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for

themselves. Generally, the assets within the trust are not accessible to the beneficiary.

(1) If the beneficiary does not have access to income from the trust, then it is not counted as part of income.

(2) If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

Example – Special Needs Trust

Daryl Rockland is a 55-year-old person with disabilities, living with his elderly parents. The parents have established a special-needs trust to provide income for their son after they are gone. The trust is not revocable; neither the parents nor the son currently have access to the principal or interest. In calculating the income of the Rocklands, the owner will disregard the trust.

2. Annuities.

a. Annuity facts and terms.

(1) An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.

- A hybrid annuity (also called a combination annuity) combines the features of a fixed annuity and a variable annuity.

- A deferred annuity is an annuity that delays income payments until the holder chooses to receive them. An immediate annuity is one that begins payments immediately upon purchase.

- A life annuity continues to pay out as long as the owner is alive. A single-life annuity provides income benefits for only one person. A joint life annuity is issued on two individuals, and payments continue in whole or in part as long as either individual is alive.

(2) Generally, a person who holds an annuity from which he or she is not yet receiving payments will also be earning income. In most instances, a fixed annuity will be earning interest at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn (or lose) based on market fluctuations, as in a mutual fund.

(3) Most annuities charge surrender or withdrawal fees. In addition, early withdrawal usually results in tax penalties.

(4) Depending on the type of annuity and the current status of the annuity, the owner will need to ask different questions of the verification source, which will normally be the applicant or tenant's insurance broker.

b. Income after the holder begins receiving payments.

(1) When verifying an annuity, owners should ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.

(2) Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made. **

c. Calculations when an annuity is considered an asset.

(1) When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. **It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.

(2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a fixed rate in the same manner that a CD earns income. A variable annuity will earn (or lose) based on current market conditions, as with a mutual fund.

(3) The owner will need to verify with the insurance agent or other appropriate source:

- The right of the holder to withdraw the balance (even if penalties are involved).
- The basis on which the annuity may be expected to grow during the coming year.
- The surrender or early withdrawal penalty fee.
- The tax rate and the tax penalty that would apply if the family withdrew the annuity.

(4) The cash value will be the full value of the annuity, less the surrender (or withdrawal) penalty, and less any taxes and tax penalties that would be due.

(5) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)

(6) The imputed income from the asset is calculated only after the cash value of all family assets has been determined.

3. Lump sum receipts counted as assets.

- a. Commonly, when a family receives a large amount of money, a lump sum payment, the family will put the money in a checking or savings account, or will purchase stocks or bonds

or a CD. Owners must count lump sum payments received by a tenant as assets. Examples of lump sum payments include the following:

- (1) Inheritances;
- (2) Capital gains;
- (3) Lottery winnings paid in one payment;
- (4) Cash from the sale of assets;
- (5) Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses); and
- (6) Any other amounts that are received in one-time lump sum payments.

Example – Calculating the Cash Value of an Annuity

Rodrigo Ramirez, site manager at Fernwood Forrest, has interviewed Barbara Barstow, an applicant who reports holding an annuity from which she will not receive payments for another 15 years when she turns 65. The applicant could not provide any more detail on the annuity but did report the name, address, and phone number of her insurance agent.

Rodrigo called the insurance agent and faxed a copy of the applicant's approval for release of information. As a result, Rodrigo learned that the annuity is a fixed annuity, with a current value of \$20,400 earning interest at an annual rate of 4.5%. The applicant could withdraw the current balance in the account but would pay a surrender penalty of \$3,000. If the annuity is withdrawn, then the applicant will owe \$1,200 in tax penalties.

In this example, the important information for calculating cash value is the current value, \$20,400; the surrender fee, \$3,000; and the tax penalties, \$1,200. If the applicant withdrew the cash from the annuity, after paying the surrender fee and tax penalty, then the amount of cash received would be \$16,200.

The cash value, \$16,200, is recorded as an asset.

Rodrigo will also calculate the actual anticipated income on this asset: $\$20,400 \times .045 = \918 .

- b. A lump sum payment is counted as an asset only as long as the family continues to possess it. If the family uses the money for something that is not an asset – a car or a vacation or education – the lump sum must not be counted.
- c. It is possible that a lump sum or an asset purchased with a lump sum payment may result in enough income to require the family to report the increased income before the next regular scheduled annual recertification. But this requirement to report an increase in income before the next annual recertification would not apply if the income from the asset was not measureable by the tenant (e.g., gem, stamp collection).

Examples – Lump Sum Additions to Family Assets

(One-Time Payment)

- JoAnne Wettig won \$500 in the lottery and received it in one payment. Do not count the \$500 as income. At JoAnne's next annual recertification, she will report all of her assets.
 - Mia LaRue, a tenant in a Section 8 property, won \$75,000 in one payment in the lottery. She buys a car with some of the money, and puts the remaining amount of \$24,000 in the bank. Mia receives her first bank statement and notices that the income on this asset is \$205 per month. She must report this increase in income because the family has experienced a cumulative increase in income of more than \$200 per month. (See paragraph 7-10 A.4 on rules for reporting interim increases in income.) The owner must perform an interim recertification and count the greater of the actual or imputed income on this asset (since the net family assets are greater than \$5,000).
-

4. Balances held in retirement accounts.

- a. Balances held in retirement accounts are counted as assets if the money is accessible to the family member. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted.
- b. IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty.
- c. Include contributions to company retirement/pension funds:
 - (1) While an individual is employed, count only amounts the family can withdraw without retiring or terminating employment.
 - (2) After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.
- d. Include in *annual income* any retirement benefits received through periodic payments.

Examples – Balances Held in an IRA or 401K Retirement Account

- Jed Dozier's 401K account balance is \$35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, \$18,000, is the amount that is counted as an asset.

5. *Federal Government/Uniformed Services Pensions In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is* determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted

as income for the applicant/tenant. (See Paragraph 5-6.K.4 for more information on Federal Government/Uniformed Services pension funds paid to a former spouse.)

6. *Other state, local government, social security or private pensions. Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and should be handled in the same manner as 5, above.*

7. Mortgage or deed of trust.

a. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a “contract sale.”

b. A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment that includes interest and principal. The value of the asset is the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income from an asset.

8. Assets disposed of for less than fair market value. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. (This provision does not apply to families receiving only BMIR assistance.)

a. Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.

b. However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than \$1,000.

Examples – Assets of More or Less Than \$1,000 Disposed of for Less Than Fair Market Value

- During the past two years, Alexis Turner donated \$300 to the local food bank, \$150 to a camp program, and \$200 to her church. The total amount she disposed of for less than fair market value is \$650. Since the total is less than \$1,000, the donations are not treated as assets disposed of for less than fair market value.
 - Jackson Jones gave each of his three children \$500. Because the total exceeds \$1,000, the gifts are treated as assets disposed of for less than fair market value.
-

c. When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, the tenant may request an interim recertification to remove the disposed asset(s). *

However, if the owner elects to only include the income for a partial remaining year as shown in the example below, an interim recertification should not be conducted.*

Example – Asset Disposed of for Less Than Fair Market Value

Margot Lundberg’s recertification will be effective January 1. On that date, it will be 18 months since she sold her house to her daughter for \$60,000 less than its value. The owner will count income on the \$60,000 for only six months. (After six months, the two-year limit on assets disposed of for less than fair market value will have expired.)

- d. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are *not* counted.
- e. Assets placed in nonrevocable trusts are considered as assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgements.
- f. Applicants and tenants must sign a self-verification form at their initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or certifying that no assets have been disposed of for less than fair market value.
- g. Owners need to verify the tenant self certification only if the information does not appear to agree with other information reported by the tenant/applicant.

Examples – Asset Disposed of for Less Than Market Value

(1) An applicant “sold” her home to her daughter for \$10,000. The home was valued at \$89,000 and had no loans secured against it. Broker fees and settlement costs are estimated at \$1,800.

\$89,000 Market value

-1,800 Fees \$87,200 Cash value

-10,000 Sales price to daughter

\$77,200 Asset disposed of for less than fair market value

In this example, the asset disposed of for less than fair market value is \$77,200. That amount is counted as the resident’s asset for two years from the date the sale took place.

(The \$10,000 received from the daughter may currently be in a savings account or other asset or may have been spent. The \$10,000 will be counted as an asset if the applicant has not spent the money.)

(2) A resident contributed \$10,000 to her grandson’s college tuition and gave her two granddaughters \$4,000 each to save for college.

\$10,000 College tuition gift

+ 8,000 Gift to granddaughters \$18,000 Asset disposed of for less than fair market

value

The \$18,000 disposed of for less than fair market value is counted as the tenant's asset or two years from the date each asset was given away.

Section 2: Verification

Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Verification. The citations and their titles (or topics) are listed below.

- A. 24 CFR part 5, subpart B – Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information
- B. 24 CFR 5.659 Family Information and Verification
- C. 24 CFR 8.24, 8.32, 100.204 (Reasonable accommodation)

Verification Requirements

A. Key Requirements

1. Owners must verify all income, assets, expenses, deductions, family characteristics, and circumstances that affect family eligibility or level of assistance.
2. Applicants and adult family members must sign consent forms to authorize the owner to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.
3. Family members 6 years of age and older must provide the owner with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number. This requirement is described in paragraphs 3-9 and 3**31** of this handbook.
4. The owner must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

Privacy Act Notice

The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937 (42 U.S.C. 1437 et. seq.), by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and by the Fair Housing Act (42 U.S.C. 3601-19). The Housing and Community Development Act of 1987 (42 U.S.C. 3543) requires applicants and participants to submit the social security number of each household member who is 6 years old or older.

Purpose: Your income and other information are being collected by HUD to determine your eligibility, the appropriate bedroom size, and the amount your family will pay toward rent and utilities.

Other Uses: HUD uses your family income and other information to assist in managing and monitoring HUD-assisted housing programs, to protect the Government's financial interest, and to verify the accuracy of the information you provide. This information may be released to appropriate federal, state, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Penalty: You must provide all of the information requested by the owner, including all social security numbers you, and all other household members age 6 years and older, have and use. Giving the social security numbers of all household members 6 years of age and older is mandatory, and not providing the social security numbers will affect your eligibility. Failure to provide any of the requested information may result in a delay or rejection of your eligibility approval.

B. Timeframe for Conducting Verifications

Owners conduct verifications at the following three times.

1. Owners must verify income, assets, expenses, and deductions and all eligibility requirements prior to move-in.
2. Owners must verify each family's income, assets, expenses, and deductions as part of the annual recertification process. Refer to Chapter 7, Section 1 for information on annual recertifications.
3. Owners must verify changes in income, allowances, or family characteristics reported between annual recertifications. Refer to Chapter 7, Section 2 for information on interim recertifications.

Acceptable Verification Methods

A. Methods of Verification

Owners must use verification methods that are acceptable to HUD. The owner is responsible for determining if the verification documentation is adequate and credible. HUD accepts three methods of verification. These are, in order of acceptability, third-party verification, review of documents, and family certification. If third-party verification is not available, owners must document the tenant file to explain why third-party verification was not available.

B. Third-Party Verification

The following describes ways in which third-party verification may be obtained.

1. Written. Written documentation sent directly by a third-party source is the preferred method of verification. It is assumed that third-party sources will send written verification to the owner through the mail. (For information about electronic documentation, see subparagraph B3 below.) The applicant or tenant should not hand-carry the verification to or from the third-party source. If the verification does not contain an original signature or is delivered by the applicant or tenant, the owner should examine the document for evidence of tampering. In these situations, the owner may, but does not have to, accept the document as acceptable verification.
2. Oral. Oral verification, by telephone, from a reliable third-party source is an acceptable verification method. Owners frequently use this method when the third party does not respond to the written verification request. When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file.
3. Electronic. The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.
 - a. Facsimile. Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.
 - b. E-mail. Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate individual and firm.
 - c. Internet. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances. Refer to subparagraph C. Review of Documents below.

Example – Verification by Internet Printout

Jose Perez maintains a portfolio of stocks and bonds through an Internet-based stockbroker. The broker only provides electronic account statements and will not respond to a written verification request. The owner may accept a printout of Jose's most recent statement if it includes the relevant information required for a third-party verification and an Internet address and header or footer that identifies the company issuing the statement. If the owner has reason to question the authenticity of a document, the owner may require Jose to access the electronic file via the Internet in the owner's office, without providing the owner with username or password information.

C. Review of Documents

1. An owner may review documents submitted by the applicant or tenant in one of the following situations:

- a. Third-party verification is not possible or is not required. For example, verifying that a family member is over 62 years old is more appropriately accomplished by examining a birth certificate than through third-party verification. **When third party verification is not possible, refer to paragraph 5-19 E for documenting the file.**
- b. Third-party verification is delayed. If information from a third party is not received within two weeks of its request, owners may consider original documents submitted by the tenant.**

Examples – Appropriate Occasions to Verify Information through a Review of Documents

- The owner sent a verification request to the tenant's employer but did not receive a response. The owner then made several calls to the employer but has not received a return call. The owner may use a review of documents (pay stubs) for verification. The owner should insist on a series of consecutive, recent pay stubs and should have a standard policy indicating the number of consecutive pay stubs required.
- The tenant's bank charges the bank account a fee for completing verification requests. The owner allows the resident to provide a current savings account statement or checking account statements for the past six months.
- The tenant's employer uses a 900 phone number, which results in a charge to the owner's phone to provide income verification. (In this case, the owner will accept the most recent consecutive eight pay stubs to verify earned income.)
- In cases where there is no third party available, a review of documents will always be appropriate. To verify a person's age, a birth certificate may be used. A social security card is the best verification of a social security number.

2. An owner must place copies of the reviewed documents in the applicant's or tenant's file. If copies cannot be made, the person reviewing the original documents must list the reviewed documents and the information provided on the documents, and must initial and date the notation.

3. Obtaining accurate verification through a review of documents requires the owner to consider the following:

- a. Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.
- b. Is the documentation complete? Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent **four to six** pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.
- c. Is the document an unaltered original? The greatest shortcoming of documents as a verification source is their susceptibility to undetectable change through the use of high-

quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.

D. Family Certification

An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

Identifying Appropriate Verification Sources

An owner must only collect information that is necessary to determine the applicant's or tenant's eligibility for assistance or level of assistance.

Required Verification and Consent Forms

A. Consent and Verification Forms

Adult members of assisted families must authorize owners to request independent verification of data required for program participation. To provide owners with this authorization, adult family members must sign two HUD-required consent forms plus the owner's specialized verification forms. Owners must create their own verification forms to request information from employers, child care providers, medical professionals, and others. Families sign these and the two HUD consent forms at the time of move-in certification and annual recertification. All adults in each assisted family must sign the required consent forms or the family must be denied assistance. Owners must give the family a copy of each form the family signed, a HUD Fact Sheet, and the Resident Rights and Responsibilities brochure.

B. HUD-Required Consent and Release Forms

Applicants and tenants must sign two HUD-required consent forms.

1. Form HUD-9887, Notice and Consent to the Release of Information to HUD and to a PHA. Each adult member must sign the form regardless of whether he or she has income. *Each family member who is at least 18 years of age and the head, spouse or co-head, regardless of age, must sign this form at move-in, initial and at each annual recertification. The form must also be signed when a new adult member joins the household.* The form is valid for 15 months from the date of signature. The consent allows HUD or a public housing agency to verify information with the Internal Revenue Service, the Social Security Administration, and with state agencies that maintain wage and unemployment claim information. Owners must keep the original signed form in the tenant's file and provide a copy to the family. Exhibit 5-5 contains a copy of form HUD-9887.
2. Form HUD 9887-A, Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance. Owners and the head of household, spouse, co-head and each family member who is at least 18 years of age must sign **a HUD-9887-A** form **at move-in and at each annual recertification**. Each adult member must sign a form regardless of whether he or she has income. The consent allows owners to request and receive information from third-party sources about the applicant or tenant. Owners keep the original form in the

tenant's file and provide a copy to the family. Exhibit 5-6 contains a copy of form HUD 9887-A.

C. Information to Tenants

Owners must provide applicants and tenants with the HUD Fact Sheet and a copy of the Resident Rights and Responsibilities brochure.

1. HUD-9887 Fact Sheet. When applicants and tenants sign form HUD9887 and form HUD 9887-A, owners must provide each family with a copy of the HUD Fact Sheet. This Fact Sheet describes the verification requirements for applicants and tenants and the tenant protections that are part of the verification process. Exhibit 5-7 contains a copy of the HUD Fact Sheet.
2. Resident Rights and Responsibilities Brochure. In addition, owners must provide applicants and tenants with a copy of the Resident Rights and Responsibilities brochure at move-in and annually at recertification. Copies of the brochure may be obtained by calling the HUD National Multifamily Clearinghouse at 800-685-8470.

D. Owner-Created Verification Forms

1. Owners must create verification forms for specific verification needs and must include the language required by HUD as shown below.
2. It is important that the applicant or tenant know whom owners will ask to provide information and to whom the completed form will be returned. Therefore, verification forms must clearly state in a prominent location that the applicant or tenant may not sign the consent if the form does not clearly indicate who will provide the requested information and who will receive the information. When sending a request for verification to a third party, owners send the verification form with the applicant's or tenant's original signature to the third-party source. Owners must retain a copy of the verification form and provide a copy to the applicant or tenant upon request.

Language Required in all Consent Forms

The following statement must appear on all consent forms developed by owners:

"Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than \$5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the **Social Security Act at 208 (a) (6), (7) and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a) (6), (7) and (8).**"

Social Security and Supplemental Security Income Data Match

- A. Owners verify social security income and supplemental security income electronically through TRACS. If there is a discrepancy between income reported by the tenant or applicant and income provided by the Social Security Administration (SSA), TRACS will automatically generate a message that is sent to the owner. The owner must attempt to contact the applicant or tenant to disclose the discrepancy. **
- B. Additional information is available on HUD's website page describing the tenant assessment system (for tenant income verification) (TASS):

www.hud.gov/offices/reac/products/prodtass.cfm

TASS is a computer-based tool to assist owners in verifying tenant incomes by comparing tenant-reported information to information in other HUD systems from the Social Security Administration and the Internal Revenue Service.

Effective Term of Verifications

Signed verification and consent forms must be used within a reasonable time after the applicant or tenant has signed if the tenant's signature is to represent a valid and current authorization by the family. Therefore, HUD has set specific limits on the duration of verification consents. In addition, verified information must be used in a timely manner since family circumstances are subject to change. HUD places several other limits on the information that may be requested and when and how it may be used.

A. Duration of Verification Authorization

Owner-created verification forms and the forms HUD 9887 and 9887-A expire 15 months after they are signed. Owners must ensure that the forms HUD 9887 and 9887-A have not expired when processing verifications. However, there are differences between the duration of form HUD-9887 and that of the individual verification forms.

1. The form HUD 9887-A and individual verification forms can be used during the 120 days before the certification period. During the certification period, however, these forms may be used only in cases where the owner receives information indicating that the information the tenant has provided may be incorrect. Other uses are prohibited.
2. Owners may verify anticipated income using individual verification forms to gather prospective information when necessary (e.g., verifying seasonal employment). Historical information that owners may request using individual verification forms is restricted as follows:
 - a. Information requested by individual verification forms is restricted to data that is no more than 12 months old.
 - b. However, if the owner receives inconsistent information and has reason to believe that the information the applicant or tenant has supplied is incorrect, the owner may obtain information from any time in the last five years when the individual was receiving assistance, as provided by the form HUD 9887-A.

3. The form HUD-9887 may be used at any time during the entire 15 month period. The information covered by the form HUD-9887 is restricted as follows:

a. State Wage Information Collection Agency (SWICA). Information received from SWICA is limited to wages and unemployment compensation the applicant or tenant received during the last five years she/he received housing assistance.

b. Internal Revenue Service and Social Security Administration. form HUD-9887 authorizes release by IRS and SSA of data from only the current income tax return and IRS W-2 form.

If the IRS or SSA matches reveal that the tenant may have supplied inconsistent information, HUD may request that the tenant consent to the owner acquiring information on the last five years during the periods in which the tenant was receiving assistance.

B. Effective Term of Verifications

1. Verifications are valid for **120** days from the date of receipt by the owner.

2. If verifications are more than 120 days old, the owner must obtain new verifications.

3. Time limits do not apply to information that does not need to be reverified, such as:

- a. Age;
- b. Disability status;
- c. Family membership; or
- d. Citizenship status.

4. Time limits also do not apply to the verification of social security numbers; however, at each recertification any family member who has previously reported having never received a social security number, must be asked:

- a. To supply verification of a social security number if one has been received; or
- b. To certify, again, that he/she has never received a social security number.

Inconsistent Information Obtained Through Verifications

An owner may not take any action to reduce, suspend, deny, or terminate assistance based on inconsistent information received during the verification process until the owner has independently investigated the information. The owner should follow procedures for addressing errors and fraud and for terminating assistance in accordance with Chapter 8.

Documenting Verifications

A. Key Requirement Owners must include verification documentation in the tenant File.

B. Documenting Third-Party Verification

Third-party verification received through the mail or by facsimile transmission must be put in the tenant file.

C. Documenting Telephone Verification

When verifying information by phone, the owner must record and include in the tenant's file the following information:

1. Third-party's name, position, and contact information;
2. Information reported by the third party;
3. Name of the person who conducted the telephone interview; and
4. Date and time of the telephone call.

D. Recording Inspection of Original Documents

Original documents should be photocopied, and the photocopy should be placed in the tenant file. If the original document cannot be copied, a clear note to the file must describe the type of document, the information contained in the document, the name of the person who reviewed the document, and the date of that review.

NOTE: It is not mandatory that social security cards be copied.

E. Documenting Why Third-Party Verification Is Not Available

When third-party verification is not available, owners must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the applicant's or tenant's file:

1. A written note to the file explaining why third-party verification is not possible;
or
2. A copy of the date-stamped original request that was sent to the third party;
3. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and
4. A written note to the file indicating that the request has been outstanding without a response from the third party.

F. Reasonable Accommodation

If an applicant or tenant cannot read or sign a consent form because of a disability, the owner must provide a reasonable accommodation. See Chapter 2, Section 3, Subsection 4 for a description of the requirements regarding reasonable accommodations.

Examples – Reasonable Accommodation

- Provide forms in large print.
- Provide readers for persons with visual disabilities.
- Allow the use of a designated signatory.
- Visit the person's home if the applicant or tenant cannot travel to the office to complete the forms.

Confidentiality of Applicant and Tenant Information

- A. Federal law limits the information owners can collect about an applicant or tenant to only information that is necessary to determine eligibility and level of assistance.
- B. Federal privacy requirements also establish the responsibility of owners and their employees to use information provided by applicants and tenants only for specified program purposes and to prevent the use or disclosure of this information for other purposes.
 1. To help ensure the privacy of applicant and tenant information, owners and their employees are subject to penalties for unauthorized disclosure of applicant/tenant information. In addition, applicants and tenants may initiate civil action against an owner for unauthorized disclosure or improper use of the information they provided. Language on the HUD-required consent forms, the verification forms developed by owners, and the ****HUD-50059**** clearly describes owners' responsibility regarding the privacy of this information and the possible penalties.
 2. HUD encourages owners to develop their own procedures and internal controls to prevent the improper use or unauthorized disclosure of information about applicants and tenants. Adequate procedures and controls protect not only applicants and tenants, but also owners.
- C. Owners must also comply with state privacy laws concerning the information they receive from third-party sources about applicants and tenants. These laws generally require confidentiality and restrict the uses of this information.

Refusal to Sign Consent Forms

- A. If an applicant refuses to sign forms HUD 9887 or 9887-A or the owner's verification forms, the owner must deny assistance.
- B. If a tenant refuses to sign the required verification and consent forms, the owner must terminate assistance. If the owner intends to terminate assistance for this reason, the owner must follow procedures established in the lease that require the tenant to pay the HUD-approved market rent for the unit. In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted if the tenant refuses to sign the required verification and consent forms.

- C. If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Income Inclusions and Exclusions

24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

INCOME INCLUSIONS

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph;**
- (5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;
- (6) Welfare Assistance.
 - (a) Welfare assistance received by the family.
 - (b) If the welfare assistance payment includes an amount specifically designated for

shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- (c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and
- (8) All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.
- **(9)** For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income.**

INCOME EXCLUSIONS

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in 24 CFR 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution ****(see Income Inclusions (9), above, for students receiving Section 8 assistance.)****

- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
- (8)
 - (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);
 - (b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);
 - (c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - (d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident-initiative coordination. No resident may receive more than one such stipend during the same period of time; or
 - (e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
- (9) Temporary, nonrecurring, or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);
- (11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
- (14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- (15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

- (16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:
- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);
 - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
 - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]);
 - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
 - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);
 - (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]; (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);
 - (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L- 94-540, 90 Stat. 2503-04);
 - (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
 - (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
 - (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;
 - (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product*

liability litigation, M.D.L. No. 381 (E.D.N.Y.);

- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- (p) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spinal bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- (s) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

CHAPTER 4

CERTIFYING ANNUAL INCOME

Applicants that apply for residence in a tax credit unit should be advised of the income restrictions mandated by the tax credit program. The income certification, income verification and annual recertification requirements should be explained to all tenants and should be included in the lease as a requirement for living in the building.

It is the owner's responsibility to certify and annually recertify each tenant that resides in all tax credit units. If there is a managing agent or some other entity certifying the tenants, owners should make sure that the managing agent or other entity has a good understanding of the tax credit program because the owner is ultimately responsible. It is recommended that the owner work with the person handling the certifications. *If any outside service, organization or Agency is handling the certification process, it should not be assumed that the certifications are in compliance. If an error is made by such entity that causes noncompliance the owner will be found out of compliance and reported to the IRS. NOTE -The fact that the owner may not receive this information from the tenant does not relieve the Agency of its obligation under federal law to monitor that project and advise the IRS of such noncompliance.*

This section of the manual provides information regarding the certification of tenant income.

Income Limitation

In order to qualify as a low-income tenant, the household's annual income must be less than the maximum allowed. The income limit is based on a percentage of area median gross income as defined by HUD and takes into account household size. A household occupying a low income unit cannot have a combined income of more than 50% or 60% of the area gross median income, depending on the set-aside option elected by the building owner. *Exhibit A1* is an area gross median income chart, which shows income by PMSAs and by number of persons in the household.

Tenant Income Certification

For purposes of satisfying the set-aside requirements, the determination of the household's income must be made on the date the low-income tenants first occupy a residential unit in the development and on an annual basis thereafter. *In the case of a rehab project with existing tenants, the move-in certification must be done on the date the building placed in service.*

1. Tenant Interview

Upon meeting with the tenant, review the lease and any provisions that involve the income certification procedure. Explain to the tenant that the tax credit program is an affordable housing program and that in order for a tenant to reside in the building, they must comply with the certification requirements. Explain to them that once they reside in the building they must continue to comply with the certification requirements and any other lease provisions. Finally advise the tenant that any instance of fraud will not be tolerated and will be subject to eviction.

2. Tenant Income Certification

Each tenant must be initially certified as to the level of anticipated annual income for each member of the household in order to verify eligibility as a low income resident. The owner/agent is required to complete an income certification form (*See [Exhibit C1](#)*). The owner/agent must complete an annual income certification for each low-income tenant, or, in the case of a tenant receiving Section 8 housing assistance payments, a statement from a public housing authority declaring that the tenant's income does not exceed the applicable income limit. The owner/agent must assist the tenant(s) by explaining the definition of Annual Income to ensure that proper disclosure is made. Certifications should not be more than one hundred twenty (120) days old.

3. Verification of Income

The owner/agent is required to verify each component of the household's reported income (i.e., wages, income from assets, social security payments) by collecting documentation to support each low-income tenant's income certification. Acceptable forms of supporting documentation are verifications of income from third parties such as employers or state agencies paying unemployment compensation (*See [Exhibit D8](#)*).

In the case of a tenant receiving housing assistance payments under Section 8, the owner/agent may obtain from the public housing authority a statement declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) (*See [Exhibit C10](#)*).

Below is a summary of sample forms, which are contained in the exhibits. These sample forms are enclosed to show suggested formats and language in order to verify income. Owners/managers may use their own forms and establish their own procedures for verifying income, as long as all income is certified and verified.

4. Annual Income Recertification

Annually, after the initial income certification, the owner/agent must recertify the income for each low income tenant in the building within 12 months of the most recent certification by obtaining a new tenant Income Certification and supporting documentation. For residents residing in 100% tax credit properties, an initial certification shall be required at move-in, followed by a re-certification on the 1 year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to operate 100% affordable/tax credit. While a resident shall still be required to complete the Tenant income Certification and other forms on an annual basis, 3rd party verification of income shall no longer be required.

NUMBER	EXHIBIT TITLE	DESCRIPTION
C1	TENANT INCOME CERTIFICATION	To be completed for each household (all members of the household) to disclose all forms of income. In the case of a Sec. 8 tenant, a statement from the public housing authority must be maintained in the tenant files. The owner/agent should assist the tenant(s) by explaining the definition of Annual Income to ensure that proper disclosure is made.
C2	INCOME VERIFICATION FROM EMPLOYER	Should be used to verify employment income for each tenant; to be completed by each employer.
C4	VERIFICATION OF UNEMPLOYMENT BENEFITS	To verify unemployment benefits; to be completed by personnel from the unemployment office.
C5	AFFIDAVIT OF NO INCOME	To be completed by any tenant, indicating that he/she is currently unemployed and not collecting any form of income (i.e., Social Security, unemployment, disability insurance, support from family, friend, etc.). Upon employment, tenant will notify the manager.
C6	VERIFICATION OF SUPPORT	To verify the amount of support received from a spouse, other family member or friend, if obtainable.
C7	CONSENT FORM TO RELEASE SOCIAL SECURITY INFORMATION	To verify social security income; to be completed by Social Security Administration.

NUMBER	EXHIBIT TITLE	DESCRIPTION
C8	VERIFICATION OF MILITARY PAY	To verify military pay, either for full or part time employment; to be completed by the personnel office or a commanding officer.
C9	BANKING VERIFICATION	To verify assets on deposit (checking, savings, CDs, money markets, etc.) in a bank, savings and loan, etc.; to be completed by a banking officer.
C10	VERIFICATION OF INCOME ELIGIBILITY FROM SECTION 8 OFFICE	To verify income and other supporting documentation in lieu of obtaining it from the tenant.
C11	CERTIFICATION OF ASSETS LESS THAN \$5000	Instead of verifying Net Family Assets of less than \$5000 by a third party verification (i.e., a banking verification), owners/agents may accept a signed, sworn statement from the tenant (See Exhibit D5). NOTE - Section 8 definition of Net Family Assets is used (24 CFR 813.102).
C12	CERTIFICATION OF ASSETS DISPOSED FOR LESS THAN FAIR MARKET VALUE	The tenant must certify as to the amount what an asset is worth when disposed of for less than fair market value for the certification/recertification periods two (2) years from the date of the disposal.
C13	FULL TIME STUDENT ELIGIBILITY SELF AFFIDAVIT	The tenant must certify the number of full-time students residing in the household.

CHAPTER 5

DETERMINING ALLOWABLE RENTS

The gross rent charged by the owner/agent must comply with the owner's election of the minimum set-aside requirement - meaning that the gross rent must be affordable to tenants earning either 50% or 60% of the area gross median income. The definition of area gross median income is based on the HUD methodology used for the Section 8 program of the U.S. Housing Act of 1937. *Exhibits A1* contains the most recent income limits released by HUD (Limits are subject to change, check to see that you have the most recent). Gross rent does not include any payment under Section 8 or any comparable rental assistance program with respect to such unit or the occupants.

This section of the manual explains how rent is calculated under the tax credit program.

Projects Receiving Tax Credits Before 1990/ Household Size

Maximum gross rent is based on *household* size for projects which received tax credits before 1990, unless the owner elected the bedroom size option (see below) by February 1994. The restricted rent is calculated by multiplying the applicable area gross median income limitation for the actual household size by .3 and then dividing by 12 to determine the monthly gross rent. Therefore, units of the same size may have different rents depending on the size of the family which resides there.

Pre - 1990 Formula:

$$\frac{50\% \text{ or } 60\% \text{ of Area Gross Median Income}^* \times 30\%}{\text{divided by 12 months}} = \text{Maximum Gross Rent}$$

* Area gross median income is determined by the size of the household residing in the unit

Owners of projects receiving tax credits before 1990 had the option in 1994 to elect to calculate the rent based on unit size rather than household size (See [Exhibit D7](#)). Once made, this election of how rent will be calculated is irrevocable and can be used only for those tenants that move in after the date of the election. This means that the owner of a building that made this election will calculate the rents of existing tenants by household and future tenants by bedroom size. Managing agents should verify with the owner of the development which rent calculation is applicable.

Projects Receiving Tax Credits beginning January 1, 1990/ Bedroom Size

Maximum gross rent is based on *unit* size for projects that received tax credits beginning January 1, 1990. The restricted rent is calculated by multiplying the applicable area gross median income limitation for a family size of 1.5 persons per bedroom by .3 and then by dividing by 12 to determine the monthly gross rent. In the case of efficiency units, the area gross median income should be based on 1 person. Therefore, all units of the same size have the same rent regardless of the household size.

1990 and Post 1990 Formula:

$$\frac{50\% \text{ or } 60\% \text{ of Area Gross Median Income}^* \times 30\%}{\text{divided by 12 months}} = \text{Maximum Gross Rent}$$

* Area gross median income is determined by assuming 1.5 persons per bedroom

Utility Allowances

Gross rent (regardless of which method of calculation is used) includes an allowance for all utilities which will be paid by the tenant. Utilities include heat, lights, air-conditioning, water, sewer, oil/gas but do not include telephone or cable television expenses. It is very important to use the correct allowance amount. See 26 CFR 1.42-10 Utility Allowances ([Exhibit D4](#)) and DCA's Monthly Utility Allowance ([Exhibit A2](#)) to determine the proper utility allowance. This regulation sets forth applicable utility allowances by categorizing projects into the following groups: (1) FmHA-assisted buildings, (2) Buildings with FmHA-assisted tenants, (3) HUD-regulated buildings, and (4) Other Buildings.

Other Acceptable methods of calculating utility allowances:

1. Utility Company Estimates

Under Treas. Reg. §1.42-10(b)(4)(ii)(B), any interested party (tenant, owner, or state agency) may request a written estimated cost of that utility for a unit of similar size and construction *for the geographic area in which the building is located*. This estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. The local utility estimate is not available to buildings/tenants subject to Rural Housing Service or HUD jurisdiction.

2. HUD Utility Schedule Model

Under Treas. Reg. §1.42-10(b)(4)(ii)(D),⁹ a building owner may calculate a utility allowance using the “HUD Utility Schedule Model” that can be found on HUD’s Internet site, the Low-Income Housing Tax Credits page at www.huduser.org/datasets/lihtc.html or successor URL. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the date the utility allowance will change.

3. Energy Consumption Model

Under Treas. Reg. §1.42-10(b)(4)(ii)(E),¹⁰ a building owner may calculate a utility allowance using an energy and water and sewage consumption analysis model (energy consumption model).

Factors to Consider

The energy consumption model must, at a minimum, take into account specific factors including, but not limited to: (1) unit size, (2) building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.

Estimates Provided by Licensed Engineer or Qualified Professional

The utility allowance must be prepared by a properly licensed engineer or a qualified professional. A qualified professional must be (1) approved by the state/local housing credit agency having jurisdiction over the building, and (2) must not be related to the building owner within the meaning of IRC §§ 267(b) or 707(b).

Owners should review this regulation to determine which building category they fall into. Buildings that are not Farmers Home assisted, nor a HUD-regulated building (as defined in the regulation) and where no tenant receives Farmers Home assistance fall into the category of “Other Buildings.” These buildings have the option of obtaining a local utility company estimate for units in the building. If such estimate is obtained, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building.

If at any time during the compliance period or extended-use period, the applicable utility allowance changes, the new utility allowance must be used to compute gross rents of rent restricted units due 90 days after the change.

The applicable utility allowance *must* be subtracted from the maximum gross rent in order to determine the maximum rent allowed to be charged by the owner/agent to the tenant.

Sample Rent Calculations

The examples below are for the purpose of guiding the owner/agent through the mathematical formulas used to figure maximum allowable rents. The owner/agent should be aware that the sample area gross median income limits used for these examples are based on HUD's figures (*See Exhibit A1*) and the utility allowance schedule provided by DCA (*See Exhibit A2*). Both are subject to change in future years.

A. Projects With Pre-1990 Tax Credits and No Election

1. Family of 4 living in a 2 bedroom, HUD-regulated duplex in Essex County. The minimum set-aside chosen by the owner was 20% at 50%, although 100% of the building is low income. The family is responsible for paying all its utilities (includes gas heat, hot water, cooking fuel and household electric), except water and sewer.

Median income - Family of 4	\$60,500
50%	<u>x .5</u>
Maximum Income	\$30,250
Affordability Control	<u>x .30</u>
Maximum Gross Rent - Annually	\$ 9,075
(Months in Year)	<u>÷ 12</u>
Maximum Gross Rent - Monthly	756
Utility Allowance - HUD	<u>- 98*</u>
Maximum Chargeable Rent	\$ 658

*HUD Allowances:	27	gas - heat
	+ 5	gas - cooking fuel
	+ 36	household electric
	+ 12	gas - hot water
	<u>+ 18</u>	trash collection
	98	

2. Family of 5 living in a 3 bedroom apartment in a HUD regulated, 2 story building in Middlesex County. The minimum set-aside chosen by the owner was 40% at 60%, although 100% of the building is low income. The family is responsible for paying all utilities, which include gas heat, hot water, cooking fuel and household electric. Water, sewer and trash collection are included in the rent.

Median income - Family of 5	\$72,800
60%	<u>x .6</u>
Maximum Income	\$43,680
Affordability Control	<u>x .30</u>
Maximum Gross Rent - Annually	13,104
(Months in Year)	<u>÷ 12</u>
Maximum Gross Rent - Monthly	1,092
Utility Allowance - HUD	<u>- 88*</u>
Maximum Chargeable Rent	\$ 1,004

*HUD Allowances:	\$ 24	gas - heat
	+ 6	gas - cooking fuel
	+ 44	household electric
	+ 14	gas - hot water
	<u>\$ 88</u>	

B. Projects With Tax Credits after January 1, 1990

1. Family of 4 living in a 2 bedroom, HUD-regulated duplex in Essex County. The minimum set-aside chosen by the owner was 20% at 50%, although 100% of the building is low income. The family is responsible for paying its utilities, which include gas heat, hot water, cooking fuel, household electric and trash removal. Water and sewer are included in the rent.

Median income for 3-Person Household	\$54,400	
50%	<u>x .5</u>	
Maximum Income	\$27,200	
Affordability Control	<u>x .30</u>	
Maximum Gross Rent - Annually	\$ 8,160	
(Months in Year)	<u>÷ 12</u>	(2 BR @ 1.5 persons
Maximum Gross Rent - Monthly	680	per bedroom = 3 persons)
Utility Allowance - HUD	<u>- 98*</u>	
Maximum Chargeable Rent	\$ 582	

*HUD Allowances:	27	gas - heat
	+ 5	gas - cooking fuel
	+ 36	household electric
	+ 12	gas - hot water
	+ 18	trash collection
	<u>98</u>	

2. Family of 5 living in a 3 bedroom apartment in a HUD regulated, 2 story building in Middlesex County. The minimum set-aside chosen by the owner was 40% at 60%, although 100% of the building is low income. The family is responsible for paying heat, hot water, cooking fuel and household electric. Water, sewer and trash collection are included in rent.

Median income for 4.5 persons	\$70,100	
60%	<u>x .60</u>	
Maximum Income	\$42,060	
Affordability Control	<u>x .30</u>	(3 BR @ 1.5 persons
Maximum Gross Rent - Annually	12,618	per bedroom = 4.5 persons)
Maximum Gross Rent - Monthly	1,051	

Utility Allowance - HUD	- 88*
Maximum Chargeable Rent	\$ 963

*HUD Allowances:	\$ 24	gas - heat
	+ 6	gas - cooking fuel
	+ 44	household electric
	+ 14	gas - water heating
	\$ 88	

Range of Affordability

“Affordable” typically means capable of being afforded without undue burden by an eligible household. A rental unit is typically considered “affordable” if the monthly rent, including the estimated cost of utilities paid by the tenant (the utility allowance), does not exceed 30 percent of an eligible household income.

Rents for units in the tax credit program are established based on 30 percent of the maximum income that is eligible for a unit. Anyone earning less than the maximum income will be paying more than 30 percent of his or her income toward rent. While this is allowed in the tax credit program, it is not desirable. For this reason, the Agency recommends setting rents at levels below the maximums permitted, so that they are affordable to households earning less than the maximum income. By doing this, a project expands its range of affordability.

Rents for Over-income Tenants

If the income of a household increases above the applicable income limitation, the unit will continue to be treated as a low-income unit as long as the income of the occupants initially met the income limitation and the unit continues to be rent-restricted.

However, if the income of a current low income household increases above 140 percent of the applicable income limitation, the next available unit (of a comparable or smaller size) must be rented to a low-income tenant in order for the project to remain in compliance. Tenants should not be evicted if their income exceeds the maximum income limit. In this case, the unit cannot be counted as part of the minimum set-aside requirement, but it can continue to receive tax credits.

The tenant whose income increases above 140 percent of the applicable income limitation may receive a rent increase when their lease is renewed once the next available unit is rented to a low income tenant. The Agency recommends moderate annual increases in accordance with local rent laws, if applicable, and in accordance with restrictions mandated by other funding sources, if applicable (i.e., FmHA projects). If the project is 100 percent low-income, even if you rent the next available unit to a qualifying tenant and charge a restricted rent, the rent on the unit of the tenant whose income exceeded the limit must not exceed the maximum rent permitted.

NOTE - If the Deep Rent Skewing option was elected on the Form 8609 (See [Exhibit E1](#)), the tenant's income may go up to 170 percent of the area gross median income limit and still be eligible.

Chapter 6

NJHMFA EXTENDED USE PERIOD MONITORING PROCEDURES

Section 42(h)(6) of the Internal revenue Code requires an extended low-income housing commitment of at least 15 years in addition to the compliance period. Such requirement is applicable to all properties awarded housing creditors starting in 1990. The exact term of the extended use period for each tax credit property can be found in its Deed of Easement and Restrictive Covenant for Extended Low-Income Occupancy.

New Jersey Housing and Mortgage Finance Agency has established the following procedures to enforce compliance with the extended use agreement. Unless specifically addressed below, the compliance requirements during the extended use period shall remain the same as those requirements during the extended use period shall remain the same as those requirements established by HMFA during the initial compliance period.

Reporting Requirements and Monitoring Fees

The Owner's Certificate of Continuing Program Compliance and the annual Building Status Report shall be submitted by January 31 of each year during the extended use period, along with a monitoring fee of \$20 per low-income unit. HMFA reserves the right to adjust the fee as needed to cover monitoring expenses.

Monitoring Policy

Each property shall be inspected at least once every five years, starting with the 5th year following the last inspection. Ten percent of the units (minimum of 3 and maximum of 15) shall be physically inspected and ten percent of the tenant files shall be audited. The units selected for file review may differ from those receiving a physical inspection.

NJHMFA reserves the right to inspect additional files, units, or buildings as needed to ensure compliance.

Annual Recertification

Owners shall not be required to complete a full recertification each year; however, shall have resident complete a self-affidavit listing all household members, rent amount, and income. This self-affidavit shall be signed and dated by all members of the household, age 18 and older, and the project owner or management agent.

This form shall be completed at least once every 12 months.

Application Fraction

The Applicable fraction for a building shall be determined by the unit fraction. Square footage of the units will no longer be used to determine the applicable fraction.

Full Time Students

HMFA shall not require documentation of student status.

Unit Transfer

Unit transfer from building to building shall be permitted regardless of whether a household's income is over the applicable income limit at the time of transfer.

Available Unit Rule

If a household's income goes over 140% of the applicable income limit, a currently vacant unit or the next available unit of same or smaller size in the same building shall be rented to a qualified household. This will be a one for one unit replacement.

Eviction

The eviction or termination of tenancy of an existing tenant of any low-income unit (other than for good cause) shall be prohibited throughout the term of the compliance and extended use periods.

Noncompliance

If an owner fails to comply with the monitoring requirements during the extended use period, a notice of noncompliance shall be issued. A 30-day period shall be allowed to correct any deficiencies. If an additional 30-day correctional period is needed to correct the noncompliance, a request must be made in writing. If the noncompliance is still not corrected after the 30 or 60 days, the owner and/or management company shall be considered to be in "not in good standing" with the Agency's Tax Credit Division. Once the noncompliance is corrected, this designation shall be removed. As long as an owner or management company remain "not in good standing" they are ineligible to be part of the development team for any new tax credit awards. The Agency also has the right to enforce specific performance through the court system.

CHAPTER 7

EXHIBITS

A. Income and Rent Limitations

Exhibit A1	Income Limits and Maximum Rents
Exhibit A2	Utility Allowance Schedule

B. NJHMFA Annual Reports

Exhibit B1	Owners Certificate of Continuing Program Compliance
Exhibit B2	Annual Project Certification for Projects with a Special Needs Component/Social Service Model
Exhibit B3	Owners Cert Extended Use Period

C. NJHMFA Sample Income Certification and Verification Forms

Exhibit C1	Tenant Income Certification
Exhibit C2	Employment Verification
Exhibit C3	LEFT INTENTIONALLY BLANK
Exhibit C4	Verification of Unemployment Benefits
Exhibit C5	Certification of Zero Income
Exhibit C6	Verification of Support
Exhibit C7	Consent Form to Release Social Security Information
Exhibit C8	Verification of Military Pay
Exhibit C9	Banking Verification
Exhibit C10	Verification of Income Eligibility from Section 8 Office
Exhibit C11	LEFT INTENTIONALLY BLANK
Exhibit C12	Certification of Assets Disposed of for Less than Fair Market Value
Exhibit C13	Student Verification
Exhibit C14	Tenant Income Self Cert.

D. LITC Regulations and Rules

Exhibit D1	IRS Final Regulations Procedure for Monitoring Compliance with Low Income Housing Credit Requirements
Exhibit D2	IRS Revenue Ruling 92-61 (Full-time Resident Manager's Unit)
Exhibit D3	LEFT INTENTIONALLY BLANK
Exhibit D4	IRS Regulations 1.42-10 (Utility Allowance)
Exhibit D5	IRS Revenue Procedure 94-65 (Documentation of Income from Assets when Assets do not exceed \$5000)

<u>Exhibit D6</u>	LEFT INTENTIONALLY BLANK
<u>Exhibit D7</u>	Revenue Procedure 94- 9 (Election to Determine Rents by Number of Bedrooms)
<u>Exhibit D8</u>	Schedule of Acceptable Sources of Income Verification
<u>Exhibit D9</u>	NJHMFA Audit List
<u>Exhibit D10</u>	Internal Revenue Code, Section 42
<u>Exhibit D11</u>	IRS Notice 88-80 (Income Determination)
<u>Exhibit D12</u>	IRS Final Regulations (Available Unit Rule)

E. IRS Forms

<u>Exhibit E1</u>	IRS Form 8609 (Low Income Housing Credit Agencies Allocation Certification)
<u>Exhibit E2</u>	IRS Form 8823 (Low Income Housing Credit Agencies Report of Noncompliance)
<u>Exhibit E3</u>	IRS Form 8611 (Recapture of Low Income Housing Credit)

DETERMINING WHICH TAX CREDIT INCOME LIMITS TO USE

COUNTY	PROJECTS PLACED IN SERVICE ON OR BEFORE 12/31/08	PROJECTS PLACED IN SERVICE AFTER 12/31/08
ATLANTIC	MTSP	MTSP
*BERGEN	HERA	MTSP
BURLINGTON	MTSP	MTSP
CAMDEN	MTSP	MTSP
CAPE MAY	MTSP	MTSP
CUMBERLAND	MTSP	MTSP
*ESSEX	HERA	MTSP
GLOUCESTER	MTSP	MTSP
HUDSON	MTSP	MTSP
HUNTERDON	MTSP	MTSP
*MERCER	HERA	MTSP
MIDDLESEX	MTSP	MTSP
MONMOUTH	MTSP	MTSP
*MORRIS	HERA	MTSP
OCEAN	MTSP	MTSP
*PASSAIC	HERA	MTSP
SALEM	MTSP	MTSP
SOMERSET	MTSP	MTSP
*SUSSEX	HERA	MTSP
*UNION	HERA	MTSP
WARREN	MTSP	MTSP

*** HERA COUNTIES**

HERA = HOUSING AND ECONOMIC RECOVERY ACT

MTSP = MULTIFAMILY TAX SUBSIDY PROJECTS

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

ATLANTIC COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	15,150	17,310	19,470	21,630	23,370	25,110	26,850	28,560
40%	20,200	23,080	25,960	28,840	31,160	33,480	35,800	38,080
50%	25,250	28,850	32,450	36,050	38,950	41,850	44,750	47,600
60%	30,300	34,620	38,940	43,260	46,740	50,220	53,700	57,120
80%	40,400	46,160	51,920	57,680	62,320	66,960	71,600	76,160

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	378	405	486	562	627	692
40%	505	541	649	750	837	923
50%	631	676	811	937	1,046	1,154
60%	757	811	973	1,125	1,255	1,385
80%	1,010	1,082	1,298	1,500	1,674	1,847

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

BERGEN COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,890	22,710	25,560	28,380	30,660	32,940	35,220	37,470
40%	26,520	30,280	34,080	37,840	40,880	43,920	46,960	49,960
50%	33,150	37,850	42,600	47,300	51,100	54,900	58,700	62,450
60%	39,780	45,420	51,120	56,760	61,320	65,880	70,440	74,940
80%	53,040	60,560	68,160	75,680	81,760	87,840	93,920	99,920

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	497	532	639	738	823	908
40%	663	710	852	984	1,098	1,211
50%	828	887	1,065	1,230	1,372	1,514
60%	994	1,065	1,278	1,476	1,647	1,817
80%	1,326	1,420	1,704	1,968	2,196	2,423

HERA Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	20,040	22,890	25,740	28,590	30,900	33,180	35,460	37,740
40%	26,720	30,520	34,320	38,120	41,200	44,240	47,280	50,320
50%	33,400	38,150	42,900	47,650	51,500	55,300	59,100	62,900
60%	40,080	45,780	51,480	57,180	61,800	66,360	70,920	75,480
80%	53,440	61,040	68,640	76,240	82,400	88,480	94,560	100,640

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	501	536	643	743	829	915
40%	668	715	858	991	1,106	1,220
50%	835	894	1,072	1,239	1,382	1,525
60%	1,002	1,073	1,287	1,487	1,659	1,830
80%	1,336	1,431	1,716	1,983	2,212	2,440

New Jersey Housing and Mortgage Finance Agency

2012 INCOME LIMITS and Maximum Rents

Effective Date: 12/01/2011

BURLINGTON COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	17,130	19,560	22,020	24,450	26,430	28,380	30,330	32,280
40%	22,840	26,080	29,360	32,600	35,240	37,840	40,440	43,040
50%	28,550	32,600	36,700	40,750	44,050	47,300	50,550	53,800
60%	34,260	39,120	44,040	48,900	52,860	56,760	60,660	64,560
80%	45,680	52,160	58,720	65,200	70,480	75,680	80,880	86,080

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	428	458	550	636	709	782
40%	571	611	734	848	946	1,043
50%	713	764	917	1,060	1,182	1,304
60%	856	917	1,101	1,272	1,419	1,565
80%	1,142	1,223	1,468	1,696	1,892	2,087

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

CAMDEN COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	17,130	19,560	22,020	24,450	26,430	28,380	30,330	32,280
40%	22,840	26,080	29,360	32,600	35,240	37,840	40,440	43,040
50%	28,550	32,600	36,700	40,750	44,050	47,300	50,550	53,800
60%	34,260	39,120	44,040	48,900	52,860	56,760	60,660	64,560
80%	45,680	52,160	58,720	65,200	70,480	75,680	80,880	86,080

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	428	458	550	636	709	782
40%	571	611	734	848	946	1,043
50%	713	764	917	1,060	1,182	1,304
60%	856	917	1,101	1,272	1,419	1,565
80%	1,142	1,223	1,468	1,696	1,892	2,087

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

CAPE MAY COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	14,940	17,070	19,200	21,330	23,040	24,750	26,460	28,170
40%	19,920	22,760	25,600	28,440	30,720	33,000	35,280	37,560
50%	24,900	28,450	32,000	35,550	38,400	41,250	44,100	46,950
60%	29,880	34,140	38,400	42,660	46,080	49,500	52,920	56,340
80%	39,840	45,520	51,200	56,880	61,440	66,000	70,560	75,120

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	373	400	480	554	618	682
40%	498	533	640	739	825	910
50%	622	666	800	924	1,031	1,138
60%	747	800	960	1,109	1,237	1,365
80%	996	1,067	1,280	1,479	1,650	1,821

New Jersey Housing and Mortgage Finance Agency

2012 INCOME LIMITS and Maximum Rents

Effective Date: 12/01/2011

CUMBERLAND COUNTY

MTSP Income Limits by Household Size

	<u><i>1 Person</i></u>	<u><i>2 Person</i></u>	<u><i>3 Person</i></u>	<u><i>4 Person</i></u>	<u><i>5 Person</i></u>	<u><i>6 Person</i></u>	<u><i>7 Person</i></u>	<u><i>8 Person</i></u>
30%	13,320	15,210	17,100	18,990	20,520	22,050	23,550	25,080
40%	17,760	20,280	22,800	25,320	27,360	29,400	31,400	33,440
50%	22,200	25,350	28,500	31,650	34,200	36,750	39,250	41,800
60%	26,640	30,420	34,200	37,980	41,040	44,100	47,100	50,160
80%	35,520	40,560	45,600	50,640	54,720	58,800	62,800	66,880

Maximum Gross Rent by Bedroom Size

	<u><i>0</i></u>	<u><i>1</i></u>	<u><i>2</i></u>	<u><i>3</i></u>	<u><i>4</i></u>	<u><i>5</i></u>
30%	333	356	427	493	551	607
40%	444	475	570	658	735	810
50%	555	594	712	823	918	1,013
60%	666	713	855	987	1,102	1,215
80%	888	951	1,140	1,317	1,470	1,621

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

ESSEX COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,050	21,780	24,510	27,210	29,400	31,590	33,750	35,940
40%	25,400	29,040	32,680	36,280	39,200	42,120	45,000	47,920
50%	31,750	36,300	40,850	45,350	49,000	52,650	56,250	59,900
60%	38,100	43,560	49,020	54,420	58,800	63,180	67,500	71,880
80%	50,800	58,080	65,360	72,560	78,400	84,240	90,000	95,840

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	476	510	612	707	789	871
40%	635	680	817	943	1,053	1,161
50%	793	850	1,021	1,179	1,316	1,451
60%	952	1,020	1,225	1,415	1,579	1,742
80%	1,270	1,361	1,634	1,887	2,106	2,323

HERA Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,200	21,930	24,660	27,390	29,610	31,800	33,990	36,180
40%	25,600	29,240	32,880	36,520	39,480	42,400	45,320	48,240
50%	32,000	36,550	41,100	45,650	49,350	53,000	56,650	60,300
60%	38,400	43,860	49,320	54,780	59,220	63,600	67,980	72,360
80%	51,200	58,480	65,760	73,040	78,960	84,800	90,640	96,480

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	480	514	616	712	795	877
40%	640	685	822	950	1,060	1,169
50%	800	856	1,027	1,187	1,325	1,461
60%	960	1,028	1,233	1,425	1,590	1,754
80%	1,280	1,371	1,644	1,900	2,120	2,339

New Jersey Housing and Mortgage Finance Agency

2012 INCOME LIMITS and Maximum Rents

Effective Date: 12/01/2011

GLOUCESTER COUNTY

MTSP Income Limits by Household Size

	<u><i>1 Person</i></u>	<u><i>2 Person</i></u>	<u><i>3 Person</i></u>	<u><i>4 Person</i></u>	<u><i>5 Person</i></u>	<u><i>6 Person</i></u>	<u><i>7 Person</i></u>	<u><i>8 Person</i></u>
30%	17,130	19,560	22,020	24,450	26,430	28,380	30,330	32,280
40%	22,840	26,080	29,360	32,600	35,240	37,840	40,440	43,040
50%	28,550	32,600	36,700	40,750	44,050	47,300	50,550	53,800
60%	34,260	39,120	44,040	48,900	52,860	56,760	60,660	64,560
80%	45,680	52,160	58,720	65,200	70,480	75,680	80,880	86,080

Maximum Gross Rent by Bedroom Size

	<u><i>0</i></u>	<u><i>1</i></u>	<u><i>2</i></u>	<u><i>3</i></u>	<u><i>4</i></u>	<u><i>5</i></u>
30%	428	458	550	636	709	782
40%	571	611	734	848	946	1,043
50%	713	764	917	1,060	1,182	1,304
60%	856	917	1,101	1,272	1,419	1,565
80%	1,142	1,223	1,468	1,696	1,892	2,087

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

HUDSON COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	15,480	17,670	19,890	22,080	23,850	25,620	27,390	29,160
40%	20,640	23,560	26,520	29,440	31,800	34,160	36,520	38,880
50%	25,800	29,450	33,150	36,800	39,750	42,700	45,650	48,600
60%	30,960	35,340	39,780	44,160	47,700	51,240	54,780	58,320
80%	41,280	47,120	53,040	58,880	63,600	68,320	73,040	77,760

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	387	414	497	574	640	706
40%	516	552	663	765	854	942
50%	645	690	828	956	1,067	1,178
60%	774	828	994	1,148	1,281	1,413
80%	1,032	1,105	1,326	1,531	1,708	1,885

New Jersey Housing and Mortgage Finance Agency

2012 INCOME LIMITS and Maximum Rents

Effective Date: 12/01/2011

HUNTERDON COUNTY

MTSP Income Limits by Household Size

	<u><i>1 Person</i></u>	<u><i>2 Person</i></u>	<u><i>3 Person</i></u>	<u><i>4 Person</i></u>	<u><i>5 Person</i></u>	<u><i>6 Person</i></u>	<u><i>7 Person</i></u>	<u><i>8 Person</i></u>
30%	22,050	25,200	28,350	31,500	34,020	36,540	39,060	41,580
40%	29,400	33,600	37,800	42,000	45,360	48,720	52,080	55,440
50%	36,750	42,000	47,250	52,500	56,700	60,900	65,100	69,300
60%	44,100	50,400	56,700	63,000	68,040	73,080	78,120	83,160
80%	58,800	67,200	75,600	84,000	90,720	97,440	104,160	110,880

Maximum Gross Rent by Bedroom Size

	<u><i>0</i></u>	<u><i>1</i></u>	<u><i>2</i></u>	<u><i>3</i></u>	<u><i>4</i></u>	<u><i>5</i></u>
30%	551	590	708	819	913	1,008
40%	735	787	945	1,092	1,218	1,344
50%	918	984	1,181	1,365	1,522	1,680
60%	1,102	1,181	1,417	1,638	1,827	2,016
80%	1,470	1,575	1,890	2,184	2,436	2,688

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/11

MERCER COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	20,100	22,980	25,860	28,710	31,020	33,330	35,610	37,920
40%	26,800	30,640	34,480	38,280	41,360	44,440	47,480	50,560
50%	33,500	38,300	43,100	47,850	51,700	55,550	59,350	63,200
60%	40,200	45,960	51,720	57,420	62,040	66,660	71,220	75,840
80%	53,600	61,280	68,960	76,560	82,720	88,880	94,960	101,120

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	502	538	646	746	833	919
40%	670	718	862	995	1,111	1,225
50%	837	897	1,077	1,244	1,388	1,531
60%	1,005	1,077	1,293	1,493	1,666	1,838
80%	1,340	1,436	1,724	1,991	2,222	2,451

HERA Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	20,670	23,610	26,550	29,490	31,860	34,230	36,570	38,940
40%	27,560	31,480	35,400	39,320	42,480	45,640	48,760	51,920
50%	34,450	39,350	44,250	49,150	53,100	57,050	60,950	64,900
60%	41,340	47,220	53,100	58,980	63,720	68,460	73,140	77,880
80%	55,120	62,960	70,800	78,640	84,960	91,280	97,520	103,840

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	516	553	663	766	855	943
40%	689	738	885	1,022	1,141	1,258
50%	861	922	1,106	1,278	1,426	1,573
60%	1,033	1,107	1,327	1,533	1,711	1,887
80%	1,378	1,476	1,770	2,045	2,282	2,517

New Jersey Housing and Mortgage Finance Agency

2012 INCOME LIMITS and Maximum Rents

Effective Date: 12/01/2011

MIDDLESEX COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	22,050	25,200	28,350	31,500	34,020	36,540	39,060	41,580
40%	29,400	33,600	37,800	42,000	45,360	48,720	52,080	55,440
50%	36,750	42,000	47,250	52,500	56,700	60,900	65,100	69,300
60%	44,100	50,400	56,700	63,000	68,040	73,080	78,120	83,160
80%	58,800	67,200	75,600	84,000	90,720	97,440	104,160	110,880

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	551	590	708	819	913	1,008
40%	735	787	945	1,092	1,218	1,344
50%	918	984	1,181	1,365	1,522	1,680
60%	1,102	1,181	1,417	1,638	1,827	2,016
80%	1,470	1,575	1,890	2,184	2,436	2,688

New Jersey Housing and Mortgage Finance Agency

2012 INCOME LIMITS and Maximum Rents

Effective Date: 12/01/2011

MONMOUTH COUNTY

MTSP Income Limits by Household Size

	<u><i>1 Person</i></u>	<u><i>2 Person</i></u>	<u><i>3 Person</i></u>	<u><i>4 Person</i></u>	<u><i>5 Person</i></u>	<u><i>6 Person</i></u>	<u><i>7 Person</i></u>	<u><i>8 Person</i></u>
30%	19,260	22,020	24,780	27,510	29,730	31,920	34,140	36,330
40%	25,680	29,360	33,040	36,680	39,640	42,560	45,520	48,440
50%	32,100	36,700	41,300	45,850	49,550	53,200	56,900	60,550
60%	38,520	44,040	49,560	55,020	59,460	63,840	68,280	72,660
80%	51,360	58,720	66,080	73,360	79,280	85,120	91,040	96,880

Maximum Gross Rent by Bedroom Size

	<u><i>0</i></u>	<u><i>1</i></u>	<u><i>2</i></u>	<u><i>3</i></u>	<u><i>4</i></u>	<u><i>5</i></u>
30%	481	516	619	715	798	880
40%	642	688	826	954	1,064	1,174
50%	802	860	1,032	1,192	1,330	1,468
60%	963	1,032	1,239	1,431	1,596	1,761
80%	1,284	1,376	1,652	1,908	2,128	2,349

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

MORRIS COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,050	21,780	24,510	27,210	29,400	31,590	33,750	35,940
40%	25,400	29,040	32,680	36,280	39,200	42,120	45,000	47,920
50%	31,750	36,300	40,850	45,350	49,000	52,650	56,250	59,900
60%	38,100	43,560	49,020	54,420	58,800	63,180	67,500	71,880
80%	50,800	58,080	65,360	72,560	78,400	84,240	90,000	95,840

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	476	510	612	707	789	871
40%	635	680	817	943	1,053	1,161
50%	793	850	1,021	1,179	1,316	1,451
60%	952	1,020	1,225	1,415	1,579	1,742
80%	1,270	1,361	1,634	1,887	2,106	2,323

HERA Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,200	21,930	24,660	27,390	29,610	31,800	33,990	36,180
40%	25,600	29,240	32,880	36,520	39,480	42,400	45,320	48,240
50%	32,000	36,550	41,100	45,650	49,350	53,000	56,650	60,300
60%	38,400	43,860	49,320	54,780	59,220	63,600	67,980	72,360
80%	51,200	58,480	65,760	73,040	78,960	84,800	90,640	96,480

HERA Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	480	514	616	712	795	877
40%	640	685	822	950	1,060	1,169
50%	800	856	1,027	1,187	1,325	1,461
60%	960	1,028	1,233	1,425	1,590	1,754
80%	1,280	1,371	1,644	1,900	2,120	2,339

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

OCEAN COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,260	22,020	24,780	27,510	29,730	31,920	34,140	36,330
40%	25,680	29,360	33,040	36,680	39,640	42,560	45,520	48,440
50%	32,100	36,700	41,300	45,850	49,550	53,200	56,900	60,550
60%	38,520	44,040	49,560	55,020	59,460	63,840	68,280	72,660
80%	51,360	58,720	66,080	73,360	79,280	85,120	91,040	96,880

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	481	516	619	715	798	880
40%	642	688	826	954	1,064	1,174
50%	802	860	1,032	1,192	1,330	1,468
60%	963	1,032	1,239	1,431	1,596	1,761
80%	1,284	1,376	1,652	1,908	2,128	2,349

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

PASSAIC COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,890	22,710	25,560	28,380	30,660	32,940	35,220	37,470
40%	26,520	30,280	34,080	37,840	40,880	43,920	46,960	49,960
50%	33,150	37,850	42,600	47,300	51,100	54,900	58,700	62,450
60%	39,780	45,420	51,120	56,760	61,320	65,880	70,440	74,940
80%	53,040	60,560	68,160	75,680	81,760	87,840	93,920	99,920

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	497	532	639	738	823	908
40%	663	710	852	984	1,098	1,211
50%	828	887	1,065	1,230	1,372	1,514
60%	994	1,065	1,278	1,476	1,647	1,817
80%	1,326	1,420	1,704	1,968	2,196	2,423

HERA Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	20,040	22,890	25,740	28,590	30,900	33,180	35,460	37,740
40%	26,720	30,520	34,320	38,120	41,200	44,240	47,280	50,320
50%	33,400	38,150	42,900	47,650	51,500	55,300	59,100	62,900
60%	40,080	45,780	51,480	57,180	61,800	66,360	70,920	75,480
80%	53,440	61,040	68,640	76,240	82,400	88,480	94,560	100,640

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	501	536	643	743	829	915
40%	668	715	858	991	1,106	1,220
50%	835	894	1,072	1,239	1,382	1,525
60%	1,002	1,073	1,287	1,487	1,659	1,830
80%	1,336	1,431	1,716	1,983	2,212	2,440

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

SALEM COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	17,130	19,560	22,020	24,450	26,430	28,380	30,330	32,280
40%	22,840	26,080	29,360	32,600	35,240	37,840	40,440	43,040
50%	28,550	32,600	36,700	40,750	44,050	47,300	50,550	53,800
60%	34,260	39,120	44,040	48,900	52,860	56,760	60,660	64,560
80%	45,680	52,160	58,720	65,200	70,480	75,680	80,880	86,080

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	428	458	550	636	709	782
40%	571	611	734	848	946	1,043
50%	713	764	917	1,060	1,182	1,304
60%	856	917	1,101	1,272	1,419	1,565
80%	1,142	1,223	1,468	1,696	1,892	2,087

New Jersey Housing and Mortgage Finance Agency

2012 INCOME LIMITS and Maximum Rents

Effective Date: 12/01/2011

SOMERSET COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	22,050	25,200	28,350	31,500	34,020	36,540	39,060	41,580
40%	29,400	33,600	37,800	42,000	45,360	48,720	52,080	55,440
50%	36,750	42,000	47,250	52,500	56,700	60,900	65,100	69,300
60%	44,100	50,400	56,700	63,000	68,040	73,080	78,120	83,160
80%	58,800	67,200	75,600	84,000	90,720	97,440	104,160	110,880

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	551	590	708	819	913	1,008
40%	735	787	945	1,092	1,218	1,344
50%	918	984	1,181	1,365	1,522	1,680
60%	1,102	1,181	1,417	1,638	1,827	2,016
80%	1,470	1,575	1,890	2,184	2,436	2,688

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

SUSSEX COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,050	21,780	24,510	27,210	29,400	31,590	33,750	35,940
40%	25,400	29,040	32,680	36,280	39,200	42,120	45,000	47,920
50%	31,750	36,300	40,850	45,350	49,000	52,650	56,250	59,900
60%	38,100	43,560	49,020	54,420	58,800	63,180	67,500	71,880
80%	50,800	58,080	65,360	72,560	78,400	84,240	90,000	95,840

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	476	510	612	707	789	871
40%	635	680	817	943	1,053	1,161
50%	793	850	1,021	1,179	1,316	1,451
60%	952	1,020	1,225	1,415	1,579	1,742
80%	1,270	1,361	1,634	1,887	2,106	2,323

HERA Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,200	21,930	24,660	27,390	29,610	31,800	33,990	36,180
40%	25,600	29,240	32,880	36,520	39,480	42,400	45,320	48,240
50%	32,000	36,550	41,100	45,650	49,350	53,000	56,650	60,300
60%	38,400	43,860	49,320	54,780	59,220	63,600	67,980	72,630
80%	51,200	58,480	65,760	73,040	78,960	84,800	90,640	96,480

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	480	514	616	712	795	877
40%	640	685	822	950	1,060	1,169
50%	800	856	1,027	1,187	1,325	1,461
60%	960	1,028	1,233	1,425	1,590	1,754
80%	1,280	1,371	1,644	1,900	2,120	2,339

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

UNION COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,050	21,780	24,510	27,210	29,400	31,590	33,750	35,940
40%	25,400	29,040	32,680	36,280	39,200	42,120	45,000	47,920
50%	31,750	36,300	40,850	45,350	49,000	52,650	56,250	59,900
60%	38,100	43,560	49,020	54,420	58,800	63,180	67,500	71,880
80%	50,800	58,080	65,360	72,560	78,400	84,240	90,000	95,840

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	476	510	612	707	789	871
40%	635	680	817	943	1,053	1,161
50%	793	850	1,021	1,179	1,316	1,451
60%	952	1,020	1,225	1,415	1,579	1,742
80%	1,270	1,361	1,634	1,887	2,106	2,323

HERA Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	19,200	21,930	24,660	27,390	29,610	31,800	33,990	36,180
40%	25,600	29,240	32,880	36,520	39,480	42,400	45,320	48,240
50%	32,000	36,550	41,100	45,650	49,350	53,000	56,650	60,300
60%	38,400	43,860	49,320	54,780	59,220	63,600	67,980	72,360
80%	51,200	58,480	65,760	73,040	78,960	84,800	90,640	96,480

HERA Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	480	514	616	712	795	877
40%	640	685	822	950	1,060	1,169
50%	800	856	1,024	1,187	1,325	1,461
60%	960	1,028	1,233	1,425	1,590	1,754
80%	1,280	1,371	1,644	1,900	2,120	2,339

New Jersey Housing and Mortgage Finance Agency
2012 INCOME LIMITS and Maximum Rents
Effective Date: 12/01/2011

WARREN COUNTY

MTSP Income Limits by Household Size

	<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>	<u>6 Person</u>	<u>7 Person</u>	<u>8 Person</u>
30%	18,750	21,420	24,090	26,760	28,920	31,050	33,210	35,340
40%	25,000	28,560	32,120	35,680	38,560	41,400	44,280	47,120
50%	31,250	35,700	40,150	44,600	48,200	51,750	55,350	58,900
60%	37,500	42,840	48,180	53,520	57,840	62,100	66,420	70,680
80%	50,000	57,120	64,240	71,360	77,120	82,800	88,560	94,240

Maximum Gross Rent by Bedroom Size

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
30%	468	502	602	696	776	856
40%	625	669	803	928	1,035	1,142
50%	781	836	1,003	1,160	1,293	1,428
60%	937	1,004	1,204	1,392	1,552	1,713
80%	1,250	1,339	1,606	1,856	2,070	2,285

2012 UTILITY ALLOWANCE UPDATE

Attached are the newly released 2012 utility allowances effective 7/1/12. Per IRS regulations the new utility allowances must be implemented no later than 90 days from the date the owner receives them or 12/9/12. If you do not wish to use the DCA utility allowances, listed below are alternative methods of calculating utility allowance estimates.

1. Utility Company Estimates

Under Treas. Reg. §1.42-10(b)(4)(ii)(B), any interested party (tenant, owner, or state agency) may request a written estimated cost of that utility for a unit of similar size and construction *for the geographic area in which the building is located*. This estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. The local utility estimate is not available to buildings/tenants subject to Rural Housing Service or HUD jurisdiction.

2. HUD Utility Schedule Model

Under Treas. Reg. §1.42-10(b)(4)(ii)(D),⁹ a building owner may calculate a utility allowance using the “HUD Utility Schedule Model” that can be found on HUD’s Internet site, the Low-Income Housing Tax Credits page at www.huduser.org/datasets/lihtc.html or successor URL. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the date the utility allowance will change.

3. Energy Consumption Model

Under Treas. Reg. §1.42-10(b)(4)(ii)(E),¹⁰ a building owner may calculate a utility allowance using an energy and water and sewage consumption analysis model (energy consumption model).

Factors to Consider

The energy consumption model must, at a minimum, take into account specific factors including, but not limited to: (1) unit size, (2) building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.

Estimates Provided by Licensed Engineer or Qualified Professional

The utility allowance must be prepared by a properly licensed engineer or a qualified professional. A qualified professional must be (1) approved by the state/local housing credit agency having jurisdiction over the building, and (2) must not be related to the building owner within the meaning of IRC §§ 267(b) or 707(b).

Allowance for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 4/30/2014)

Locality		New Jersey Department of Community Affairs NJ Averages			Unit Type Low Rise		Effective 07/01/2012 Expires 06/30/2013
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	38	50	67	82	99	114
	b. Electric	44	58	77	96	115	132
	c. Bottle Gas	128	167	223	276	332	381
	d. Oil	119	156	208	257	309	355
Cooking	a. Natural Gas	7	9	12	15	18	20
	b. Electric	8	10	14	17	21	23
	c. Bottle Gas	23	30	40	49	61	66
Other Electricity		28	36	49	60	75	81
Air Conditioning		9	12	16	19	23	26
Water Heating	a. Natural Gas	9	11	15	18	23	25
	b. Electric	13	17	23	28	35	38
	c. Bottle Gas	29	37	49	61	76	82
	d. Oil	24	31	42	52	64	69
Water		27	34	42	51	56	64
Sewer		42	42	42	42	42	42
Trash Collection							
Range/Microwave		4	4	5	5	5	5
Refrigerator		3	3	3	5	5	7
Other -- specify							

Actual Family Allowances To be used by the family to compute allowance.

Complete below for actual unit rented.

		Utility or Service	per month cost
Name of Family		Heating	\$
		Cooking	
		Other Electric	
		Air Conditioning	
		Water Heating	
		Water	
		Sewer	
		Trash Collection	
		Range/Microwave	
		Refrigerator	
Address of Unit		Other	
		Total	\$
Number of Bedrooms			

Allowance for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 4/30/2014)

Locality		New Jersey Department of Community Affairs NJ Averages			Unit Type High Rise (High Rise with Elevator)*		Effective 07/01/2012 Expires 06/30/2013
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	36	41	49	59	67	84
	b. Electric	37	46	56	69	85	100
	c. Bottle Gas						
	d. Oil						
Cooking	a. Natural Gas	7	9	12	15	18	20
	b. Electric	8	10	14	17	21	23
	c. Bottle Gas						
Other Electricity		28	36	49	60	75	81
Air Conditioning		9	12	16	19	23	26
Water Heating	a. Natural Gas	9	11	15	18	23	25
	b. Electric	13	17	23	28	35	38
	c. Bottle Gas						
	d. Oil						
Water		27	34	42	51	56	64
Sewer		42	42	42	42	42	42
Trash Collection							
Range/Microwave		4	4	5	5	5	5
Refrigerator		3	3	3	5	5	7
Other -- specify							

Actual Family Allowances To be used by the family to compute allowance.

Complete below for actual unit rented.

Name of Family

Address of Unit

Number of Bedrooms

Utility or Service	per month cost
Heating	\$
Cooking	
Other Electric	
Air Conditioning	
Water Heating	
Water	
Sewer	
Trash Collection	
Range/Microwave	
Refrigerator	
Other	
Total	\$

Allowance for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 4/30/2014)

Locality		New Jersey Department of Community Affairs NJ Averages			Unit Type	Row House / Garden Apartment (Rowhouse/Townhouse)*	Effective	07/01/2012
		Expires						06/30/2013
Utility or Service		Monthly Dollar Allowances						
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	
Heating	a. Natural Gas	35	47	64	79	96	112	
	b. Electric	41	55	74	92	111	130	
	c. Bottle Gas	118	157	213	266	322	374	
	d. Oil	110	146	198	247	299	348	
Cooking	a. Natural Gas	7	9	12	15	18	20	
	b. Electric	8	10	14	17	21	23	
	c. Bottle Gas	23	30	40	49	61	66	
Other Electricity		28	36	49	60	75	81	
Air Conditioning		10	13	17	21	25	28	
Water Heating	a. Natural Gas	9	11	15	18	23	25	
	b. Electric	13	17	23	28	35	38	
	c. Bottle Gas	29	37	49	61	76	82	
	d. Oil	24	31	42	52	64	69	
Water		27	34	42	51	56	64	
Sewer		42	42	42	42	42	42	
Trash Collection								
Range/Microwave		4	4	5	5	5	5	
Refrigerator		3	3	3	5	5	7	
Other -- specify								

Actual Family Allowances To be used by the family to compute allowance.
Complete below for actual unit rented.

		Utility or Service	per month cost
Name of Family		Heating	\$
		Cooking	
		Other Electric	
		Air Conditioning	
		Water Heating	
		Water	
		Sewer	
		Trash Collection	
		Range/Microwave	
		Refrigerator	
Address of Unit		Other	
		Total	\$
Number of Bedrooms			

Allowance for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 4/30/2014)

Locality		Unit Type				Effective	07/01/2012
New Jersey Department of Community Affairs		Single Family Detached				Expires	06/30/2013
NJ Averages		Monthly Dollar Allowances					
Utility or Service		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	47	63	75	95	108	125
	b. Electric	54	73	88	110	125	145
	c. Bottle Gas	156	211	252	318	360	418
	d. Oil	145	196	235	296	335	389
Cooking	a. Natural Gas	7	9	12	15	18	20
	b. Electric	8	10	14	17	21	23
	c. Bottle Gas	23	30	40	49	61	66
Other Electricity		28	36	49	60	75	81
Air Conditioning		17	22	29	36	43	48
Water Heating	a. Natural Gas	9	11	15	18	23	25
	b. Electric	13	17	23	28	35	38
	c. Bottle Gas	29	37	49	61	76	82
	d. Oil	24	31	42	52	64	69
Water		27	34	42	51	56	64
Sewer		42	42	42	42	42	42
Trash Collection							
Range/Microwave		4	4	5	5	5	5
Refrigerator		3	3	3	5	5	7
Other – specify							

Actual Family Allowances To be used by the family to compute allowance.
Complete below for actual unit rented.

		Utility or Service	per month cost
Name of Family		Heating	\$
		Cooking	
		Other Electric	
		Air Conditioning	
		Water Heating	
		Water	
		Sewer	
		Trash Collection	
		Range/Microwave	
		Refrigerator	
Address of Unit		Other	
Number of Bedrooms		Total	\$

Allowance for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 4/30/2014)

Locality				Unit Type		Effective	
New Jersey Department of Community Affairs NJ Averages				Duplex & Two/Three Family		07/01/2012	
						Expires 06/30/2013	
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	43	55	73	90	106	120
	b. Electric	49	64	84	105	123	140
	c. Bottle Gas	142	184	243	302	354	403
	d. Oil	133	171	226	281	330	375
Cooking	a. Natural Gas	7	9	12	15	18	20
	b. Electric	8	10	14	17	21	23
	c. Bottle Gas	23	30	40	49	61	66
Other Electricity		28	36	49	60	75	81
Air Conditioning		10	13	17	21	25	28
Water Heating	a. Natural Gas	9	11	15	18	23	25
	b. Electric	13	17	23	28	35	38
	c. Bottle Gas	29	37	49	61	76	82
	d. Oil	24	31	42	52	64	69
Water		27	34	42	51	56	64
Sewer		42	42	42	42	42	42
Trash Collection							
Range/Microwave		4	4	5	5	5	5
Refrigerator		3	3	3	5	5	7
Other -- specify							

Actual Family Allowances To be used by the family to compute allowance.
Complete below for actual unit rented.

		Utility or Service	per month cost
Name of Family		Heating	\$
		Cooking	
Address of Unit		Other Electric	
		Air Conditioning	
		Water Heating	
		Water	
		Sewer	
		Trash Collection	
		Range/Microwave	
Number of Bedrooms		Refrigerator	
		Other	
		Total	\$

Allowance for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 4/30/2014)

Locality	New Jersey Department of Community Affairs NJ Averages			Unit Type	Semi-Detached		Effective 07/01/2012 Expires 06/30/2013
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	41	52	70	87	103	116
	b. Electric	47	60	81	100	120	134
	c. Bottle Gas	136	174	234	290	345	387
	d. Oil	127	162	218	269	321	360
Cooking	a. Natural Gas	7	9	12	15	18	20
	b. Electric	8	10	14	17	21	23
	c. Bottle Gas	23	30	40	49	61	66
Other Electricity		28	36	49	60	75	81
Air Conditioning		10	13	17	21	25	28
Water Heating	a. Natural Gas	9	11	15	18	23	25
	b. Electric	13	17	23	28	35	38
	c. Bottle Gas	29	37	49	61	76	82
	d. Oil	24	31	42	52	64	69
Water		27	34	42	51	56	64
Sewer		42	42	42	42	42	42
Trash Collection							
Range/Microwave		4	4	5	5	5	5
Refrigerator		3	3	3	5	5	7
Other -- specify							

Actual Family Allowances To be used by the family to compute allowance.
Complete below for actual unit rented.

		Utility or Service	per month cost
Name of Family		Heating	\$
		Cooking	
Address of Unit		Other Electric	
		Air Conditioning	
		Water Heating	
		Water	
		Sewer	
		Trash Collection	
		Range/Microwave	
		Refrigerator	
Number of Bedrooms		Other	
		Total	\$

OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

To: NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Certification Dates:	From: January 1, 2011	To: December 31, 2011	
Project Name:		LITC No:	
Project Address:		City:	Zip:
Tax ID # of Ownership Entity:			
Ownership Entity Address:			
Ownership Entity Phone Number:		Fax Number:	
Ownership Entity E-Mail Address:			

☐ No buildings have been Placed in Service

☐ At least one building has been placed in Service but owner elects to begin credit period in the following year.

If either of the above applies, please check the appropriate box, and proceed to page 2 to sign and date this form.

The undersigned_____ on behalf of _____ (the "Owner"), hereby certifies that:

1. The project meets the minimum requirements of: (check one)

☐ 20 - 50 test under Section 42(g)(1)(A) of the Code

☐ 40 - 60 test under Section 42(g)(1)(B) of the Code

☐ 15 - 40 test for "deep rent-skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code
2. There has been **no change in the applicable fraction** (as defined in Section 42(c)(1)(B) of the Code) for any building in the project:

☐ NO CHANGE

☐ CHANGE

If "**Change**", list the applicable fraction to be reported to the IRS for each building in the project for the certification year on page 3:
3. The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy.

☐ YES

☐ NO
4. Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code:

☐ YES

☐ NO
5. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code):

☐ YES

☐ NO

☐ HOMELESS
6. No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court:

☐ NO FINDING

☐ FINDING
7. Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project:

☐ YES

☐ NO

If "**No**", state nature of violation on page 3 and attach a copy of the violation report as required by 26 CFR 1.42-5 and any documentation of correction.
8. There has been **no change in the eligible basis** (as defined in Section 42(d) of the Code) of any building in the project since last certification submission:

☐ NO CHANGE

☐ CHANGE

If "**Change**", state nature of change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the project owner has received federal subsidies with respect to the project which had not been disclosed to the allocating authority in writing) on page 3:

9. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings:

☐ YES ☐ NO

10. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income:

☐ YES ☐ NO

11. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income:

☐ YES ☐ NO

12. An extended low-income housing commitment as described in section 42(h)(6) was in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989):

☐ YES ☐ NO ☐ N/A

13. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.

☐ YES ☐ NO ☐ N/A

14. There has been no change in the ownership or management of the project:

☐ NO CHANGE ☐ CHANGE

If "Change", complete page 3 detailing the changes in ownership or management of the project.

Note: Failure to complete this form in its entirety will result in noncompliance with program requirements. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form, unless permitted by the state agency.

The project is otherwise in compliance with the Code, including any Treasury Regulations, the applicable State Allocation Plan, and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY.

(Ownership Entity)

(Signature)

(Title)

(Date)

**PLEASE EXPLAIN ANY ITEMS THAT WERE
ANSWERED “NO”, “CHANGE” OR “FINDING”
ON QUESTIONS 1-14.**

[illegible]

CHANGES IN OWNERSHIP OR MANAGEMENT
(to be completed **ONLY** if “CHANGE” marked for question 14 above)

TRANSFER OF OWNERSHIP

Date of Change:	
Taxpayer ID Number:	
Legal Owner Name:	
General Partnership:	
Status of Partnership (LLC, etc):	

CHANGE IN OWNER CONTACT

Date of Change:	
Owner Contact:	
Owner Contact Phone:	
Owner Contact Fax:	
Owner Contact Email:	

CHANGE IN MANAGEMENT CONTACT

Date of Change:	
Management Co. Name:	
Management Address:	
Management city, state, zip:	
Management Contact:	
Management Contact Phone:	
Management Contact Fax:	
Management Contact Email:	

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
LOW INCOME HOUSING TAX CREDIT
ANNUAL PROJECT CERTIFICATION
for
Projects with Social Service and/or Special Needs Models**

This property, in receiving its allocation of low income tax credits, was selected in part due to the commitment on the part of the owner to provide social service programs for the tenants and/or to restrict units for occupancy by individuals with Special Needs. As part of NJHMFA monitoring, we are requesting the owner to complete and submit the following information:

LITC #:_____

Project Name:_____

Project Address:_____

Credit Year:_____ Number of Required Services:_____

Attach the following information:

- a. Job description for the person who provides social services
- b. Name of organization that provides this service
- c. Cost of the service and who pays for service (tenant-paid, free of charge, etc.)

Check the following services being provided to the residents:

- | | |
|---|--|
| <input type="checkbox"/> Child Care | <input type="checkbox"/> Adult Day Care |
| <input type="checkbox"/> After School Programs | <input type="checkbox"/> Health Care Services |
| <input type="checkbox"/> Job Training | <input type="checkbox"/> Personal Care/House Keeping |
| <input type="checkbox"/> Meals Program | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Financial counseling | <input type="checkbox"/> Computer literacy |
| <input type="checkbox"/> Social Services Coordinator (at least 20 hours per week) | |
| <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> Monthly newsletters and/or calendar of events submitted (required for Social Services) | |

Number of hours per week on-site service coordinator works:_____

Number of units set aside for the special needs component (if applicable) :_____

Special Needs population served (if applicable):_____

Number of residents that are served each month:_____

Please be aware that all information provided is required for NJHMFA LIHTC monitoring and is strictly confidential. Copies of contracts with Social Service Providers must be maintained along with other project records and must be furnished upon request by NJHMFA. During the on-site visit, NJHMFA personnel may wish to review files in regard to services and speak to various participants regarding the special needs components of the project.

NOTE: Failure to comply with the social service/special needs requirements of the application is grounds for a determination of noncompliance.

Signature:_____

Print Name and Title:_____

Date:_____

OWNER'S CERTIFICATION OF COMPLIANCE DURING THE EXTENDED USE PERIOD

New Jersey Housing and Mortgage Finance Agency

Certification Dates:	From: January 1, 2011	To: December 31, 2011	
Project Name:		Project No:	
Project Address:		City:	Zip:
Tax ID# of Ownership Entity:			

The undersigned _____ on behalf of _____ (the "Owner"), hereby certifies that:

1. The required applicable fraction has been met for each building by leasing units to individuals or families whose income is 50% or 60%, as irrevocably elected by the owner at the time of allocation, or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the Internal Revenue Code (Code).

☐ **YES**☐ **NO**

If "NO", list the applicable fraction for each building in the project for the certification year on page 3.

2. The owner has received an Initial Tenant Income Certification from each low-income resident and documentation to support that certification, and if the property contains both low-income and market units, the owner has also received an annual Tenant Income Certification from each low-income resident:

☐ **YES**☐ **NO**

3. Each low-income unit in the project has met the required rent restriction(s):

☐ **YES**☐ **NO**

4. All low-income units in the project are and have been for use by the general public:

☐ **YES**☐ **NO**

5. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.

☐ **NO FINDINGS**☐ **FINDINGS**

6. Each Building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project.

☐ **YES**☐ **NO**

If "NO", state nature of violation on page 3 and attach a copy of the violation report and any documentation of correct.

7. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis to all tenants in the buildings:

☐ **YES**☐ **NO**

OWNER'S CERTIFICATION OF COMPLIANCE DURING THE EXTENDED USE PERIOD

8. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit to tenants having a qualifying income before any units were or will be rented to tenants not having qualifying income:

☐ **YES**☐ **NO**

9. If the income of tenants of a low-income unit in any building increased above 140% of the applicable income limit, the next available unit in the building was or will be rented to residents having a qualifying income:

☐ **YES**☐ **NO**

10. An extended low-income housing commitment as described in IRS Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate or eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.

☐ **YES**☐ **NO**

11. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment.

☐ **YES**☐ **NO**

12. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the Code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code (Note: answer N/A if allocation was NOT received from non-profit set-aside).

☐ **YES**☐ **NO**☐ **N/A**

13. There has been no change in the ownership or management of the project:

☐ **NO CHANGE**☐ **CHANGE**

If "Change", complete page 3 detailing the changes in ownership or management of the project.

Note: Failure to complete this form in its entirety will result in noncompliance with program requirements. An owner or general partner of the project is required to sign this form.

This project is otherwise in compliance with the applicable State Allocation Plan, and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY.

By: _____

Title: General Partner

Date: _____

(to be completed **ONLY** if “CHANGE” marked for question question 15 above)

Date of Change:	
Management Co. Name:	
Management Address:	
Management City, State, Zip:	
Management Contact:	
Management Contact Phone:	
Management Contact Fax:	
Management Contact Email:	

TENANT INCOME CERTIFICATION
☐ Initial Certification ☐ Recertification ☐ Other _____

 Effective Date: _____
 Move-in Date: _____
 (MM/DD/YYYY)
PART I - DEVELOPMENT DATA
 Property Name: _____ County: _____ BIN #: _____
 Address: _____ Unit Number: _____ # Bedrooms: _____
PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$ _____	\$ _____	\$ _____	\$ _____

Add totals from (A) through (D), above

TOTAL INCOME (E):

\$ _____

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate		
If over \$5000		\$ _____ X 2.00%	= (J) Imputed Income	\$ _____
Enter the greater of the total of column I, or J: imputed income				TOTAL INCOME FROM ASSETS (K)
				\$ _____

(L) Total Annual Household Income from all Sources [Add (E) + (K)]

\$ _____

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature_____
(Date)_____
Signature_____
(Date)_____
Signature_____
(Date)_____
Signature_____
(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY**RECERTIFICATION ONLY:**

TOTAL ANNUAL HOUSEHOLD INCOME
FROM ALL SOURCES:
From item (L) on page 1

\$

Household Meets
Income Restriction
at:

☐ 60% ☐ 50%
☐ 40% ☐ 30%
☐ ____%

Current Income Limit x 140%:

\$

Household Income exceeds 140% at
recertification:
☐ Yes ☐ No

Current Income Limit per Family Size: \$

Household Income at Move-in: \$

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$
Utility Allowance \$

Rent Assistance: \$
Other non-optional charges: \$

GROSS RENT FOR UNIT:
(Tenant paid rent plus Utility Allowance &
other non-optional charges)

\$

Unit Meets Rent Restriction at:

☐ 60% ☐ 50% ☐ 40% ☐ 30% ☐ ____%

Maximum Rent Limit for this unit: \$

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?

☐ yes ☐ no

If yes, Enter student explanation*
(also attach documentation)

Enter
1-4

*Student Explanation:

- 1 TANF assistance
- 2 Job Training Program
- 3 Single parent/dependent child
- 4 Married/joint return

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit ☐

See Part V above.

b. HOME ☐

Income Status

☐ ≤ 50% AMGI
☐ ≤ 60% AMGI
☐ ≤ 80% AMGI
☐ OI**

c. Tax Exempt ☐

Income Status

☐ 50% AMGI
☐ 60% AMGI
☐ 80% AMGI
☐ OI**

d. AHDP ☐

Income Status

☐ 50% AMGI
☐ 80% AMGI
☐ OI**

e. _____ ☐
(Name of Program)

Income Status

☐ _____
☐ _____
☐ OI**

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date	Enter the date the tenant has or will take occupancy of the unit.
Effective Date	Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
BIN #	Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
Address	Enter the address of the building.
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

Enter the date of birth, student status, and social security number or alien registration number for each occupant.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).

Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
Row (E)	Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (i.e., checking account, savings account, etc.)
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K)	Enter the greater of the total in Column (I) or (J)
Row (L)	Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

Total Annual Household Income from all Sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status

If all household members are full time* students, check “yes”. If at least one household member is not a full time student, check “no”.

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

**Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.
Tax Exempt	If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.
AHDP	If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.
Other	If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

EMPLOYMENT VERIFICATION**THIS SECTION TO BE COMPLETED BY MANAGEMENT AND EXECUTED BY TENANT**

TO: (Name & address of employer)

Date: _____

RE: _____

Applicant/Tenant Name

Social Security Number

Unit # (if assigned)

I hereby authorize release of my employment information.

Signature of Applicant/Tenant_____
Date

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential to satisfaction of that stated purpose only. Your prompt response is crucial and greatly appreciated.

,

Project Owner/Management Agent

Return Form To:**THIS SECTION TO BE COMPLETED BY EMPLOYER**

Employee Name: _____ Job Title: _____

Presently Employed: Yes ____ Date First Employed _____ No ____ Last Day of Employment _____

Current Wages/Salary: \$ _____ (circle one) hourly weekly bi-weekly semi-monthly monthly yearly other _____

Average # of regular hours per week: _____ Year-to-date earnings: \$ _____ through __/__/__

Overtime Rate: \$ _____ per hour Average # of overtime hours per week: _____

Shift Differential Rate: \$ _____ per hour Average # of shift differential hours per week: _____

Commissions, bonuses, tips, other: \$ _____ (circle one) hourly weekly bi-weekly semi-monthly monthly yearly other _____

List any anticipated change in the employee's rate of pay within the next 12 months: _____; Effective date: _____

If the employee's work is seasonal or sporadic, please indicate the layoff period(s): _____

Additional remarks: _____

Employer's Signature_____
Employer's Printed Name_____
Date_____
Employer [Company] Name and Address_____
Phone #_____
Fax #_____
E-mail

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

SAMPLE UNEMPLOYMENT BENEFITS VERIFICATION

To: _____

Date: _____

_____ has applied for residency (or is a resident) at _____. As part of our processing, it is necessary that we obtain verification of his/her unemployment benefits. The applicant/resident hereby authorizes the release of information regarding his/her unemployment benefits.

Please complete the section below and return it in the enclosed self-addressed envelope. (Please mail rather than have the above individual hand deliver.) Thank you in advance for your prompt attention.

 Printed Name of Applicant/Resident

 Printed Name of Manager

 Signature of Applicant/Resident Date

 Signature of Manager Date

 Social Security #

 Manager's Phone Number

THE FOLLOWING IS TO BE COMPLETED BY THE OFFICE OF EMPLOYMENT:

1. Are benefits being paid now? ☐ Yes ☐ No
2. Have you been approved for payments but have not begun receiving them yet? ☐ Yes ☐ No
3. If yes, what is Gross Weekly Payment? \$ _____
4. Date of Initial Payment _____

 Printed Name of Person Supplying Information

 Signature

 Title

 Date

 Phone Number

WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense for any person to make false or fraudulent statements to any department or agency of the United States Government or public housing authority as to any matter within its jurisdiction or to make unauthorized disclosures or improper use of the information collected hereunder.

CERTIFICATION OF ZERO INCOME

Exhibit C5

(To be completed by adult household members only, if appropriate.)

Household Name: _____ Unit No. _____

Development Name: _____ City: _____

1. I hereby certify that I do not individually receive income from any of the following sources:
 - a. Wages from employment (including commissions, tips, bonuses, fees, etc.);
 - b. Income from operation of a business;
 - c. Rental income from real or personal property;
 - d. Interest or dividends from assets;
 - e. Social Security payments, annuities, insurance policies, retirement funds, pensions, or death benefits;
 - f. Unemployment or disability payments;
 - g. Public assistance payments;
 - h. Periodic allowances such as alimony, child support, or gifts received from persons not living in my household;
 - i. Sales from self-employed resources (Avon, Mary Kay, Shaklee, etc.);
 - j. Any other source not named above.
2. I currently have no income of any kind and there is no imminent change expected in my financial status or employment status during the next 12 months.
3. I will be using the following sources of funds to pay for rent and other necessities: _____

Under penalty of perjury, I certify that the information presented in this certification is true and accurate to the best of my knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

Signature of Applicant/Tenant

Printed Name of Applicant/Tenant

Date

SAMPLE
CHILD SUPPORT VERIFICATION

Exhibit C6

To: _____ Date: _____

_____ has applied for residency (or is a resident) at _____.
_____. As part of our processing, it is necessary that we obtain verification of his/her child support. The applicant/resident hereby authorizes the release of information regarding his/her child support income.

Please complete the section below and return it in the enclosed self-addressed envelope. (Please mail rather than have the above individual hand deliver.) Thank you in advance for your prompt attention.

Printed Name of Applicant/Resident

Printed Name of Manager

Signature of Applicant/Resident Date

Signature of Manager Date

Manager's Phone Number

PLEASE COMPLETE THE FOLLOWING:

Name/Address of Person Paying Child Support: _____

Child/Children Name(s): _____

Amount of Support: \$ _____ Week Month Year

Signature of Person Supplying Information

Printed Name

Date

Phone Number

<p>WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense for any person to make false or fraudulent statements to any department or agency of the United States Government or public housing authority as to any matter within its jurisdiction or to make unauthorized disclosures or improper use of the information collected hereunder.</p>
--

**SAMPLE
SOCIAL SECURITY VERIFICATION**

To: **Social Security Administration**

Date: _____

_____ has applied for residency (or is a resident) at _____. As part of our processing, it is necessary that we obtain verification of his/her Social Security Benefits/Income. The applicant/resident hereby authorizes the release of information regarding his/her Social Security Benefits/Income.

Please complete the section below and return it in the enclosed self-addressed envelope. (Please mail rather than have the above individual hand deliver.) Thank you in advance for your prompt attention.

Printed Name of Applicant/Resident_____
Printed Name of Manager_____
Signature of Applicant/Resident Date_____
Signature of Manager Date_____
Social Security Number_____
Manager's Phone Number_____
Date of Birth**TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION:**

Gross Monthly Social Security Benefit \$ _____

Gross Monthly Supplemental Security Income \$ _____

Amount of Monthly Deductions for Medicare \$ _____

Printed Name of Social Security Representative_____
Signature_____
Title_____
Date_____
Telephone

<p>WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense for any person to make false or fraudulent statements to any department or agency of the United States Government or public housing authority as to any matter within its jurisdiction or to make unauthorized disclosures or improper use of the information collected hereunder.</p>

**SAMPLE
MILITARY PAYMENT VERIFICATION**

Exhibit C8

To: _____ Date: _____

_____ has applied for residency (or is a resident) at _____.
As part of our processing, it is necessary that we obtain verification of his/her employment and anticipated Gross Annual Income. The applicant/resident hereby authorizes the release of information regarding his/her employment and income with the military.

Please complete the section below and return it in the enclosed self-addressed envelope. (Please mail rather than have the above individual hand deliver.) Thank you in advance for your prompt attention.

Printed Name of Applicant/Resident Printed Name of Manager

Signature of Applicant/Resident Date Signature of Manager Date

Manager's Phone Number

THE FOLLOWING IS TO BE COMPLETED BY THE OFFICE OF THE MILITARY:

Years _____ and months _____ of Service for Pay Purposes.

Income:

Base Pay and Longevity Pay	\$ _____
Proficiency Pay	\$ _____
Sea and Foreign Duty Pay	\$ _____
Hazardous Duty Pay	\$ _____
Subsistence Allowance	\$ _____
Quarters Allowance (include only amount contributed by the Government)	\$ _____
Number of Dependents Claimed	\$ _____
Imminent Danger Pay	\$ _____

Other (explain): _____

Printed Name of Authorized Representative Title

Signature

Date Telephone

WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense for any person to make false or fraudulent statements to any department or agency of the United States Government or public housing authority as to any matter within its jurisdiction or to make unauthorized disclosures or improper use of the information collected hereunder.

SAMPLE
ASSET VERIFICATION

Exhibit C9

Name of Bank: _____

Address of Bank: _____

Re: _____ SS#: _____
Applicant/Resident Name

Applicant/Resident Address

City, State

Zip Code

The above person(s) has applied for tenancy (or is a resident) at _____. As part of our processing, we require verification of household's income, expenses, and other information related to eligibility. The applicant/resident herein authorizes the release of information regarding his/her income and assets. The information you provide will be used only for the purpose of determining household's eligibility for tenancy. We are required to complete our verification process in a short time period and would appreciate your prompt response. If you have any questions, please contact our office.

Permission by: _____
Applicant/Resident Signature Date

Please complete the section below and return it in the enclosed self-addressed envelope. (Please mail rather than have the above individual hand deliver.) Thank you in advance for your prompt attention.

Printed Name of Manager

Signature of Manager Date Manager's Phone Number

TO BE COMPLETED BY INSTITUTION

Checking Account

<u>Date Opened</u>	<u>Account Number(s)</u>	<u>Average 6-Month Balance(s)</u>	<u>Interest Rate, If Any</u>
_____	_____	_____	_____ %
_____	_____	_____	_____ %
_____	_____	_____	_____ %

Savings Account

<u>Date Opened</u>	<u>Account Number(s)</u>	<u>Present Account Balance(s)</u>	<u>Annual Interest Rate</u>	<u>Early Withdrawal Penalty</u>
_____	_____	_____	_____ %	_____
_____	_____	_____	_____ %	_____
_____	_____	_____	_____ %	_____

Certificate of Deposit

<u>Date Opened</u>	<u>Account Number(s)</u>	<u>Present Account Balance(s)</u>	<u>Annual Interest Rate</u>	<u>Early Withdrawal Penalty</u>
				%
				%
				%

I certify that the above information is true and correct.

_____ Printed Name of Official	_____ Title of Official
_____ Name of Institution	_____ Signature
_____ Address	_____ Date
_____ City, State, Zip Code	_____ Phone Number

<p>WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense for any person to make false or fraudulent statements to any department or agency of the United States Government or public housing authority as to any matter within its jurisdiction or to make unauthorized disclosures or improper use of the information collected hereunder.</p>
--

May 2009

**SAMPLE VERIFICATION OF INCOME ELIGIBILITY FROM
SECTION 8 AUTHORITY**

(Retype onto owner/managing agent/project letterhead.)

Date

(Public Housing Authority)

(Address)

(City, State Zip)

RE: (Head of Household Name)
(Project Name, Address, Unit #)

Dear Sir/Madam:

As the owner/managing agent of the above referenced low -income housing tax credit property, I/we are required to verify the income of all applicants or existing tenants in those housing units.

The above referenced tenant receives housing assistance payments under the Section 8 program from the (Tenant's Name) Public Housing Authority. Because this tenant is residing in a Low Income Housing Tax Credit building, Section 42 of the Internal Revenue Code requires that the building owner have the tenant complete an income certification and collect documentation to support the income certification. This requirement could be met if the public housing authority provides the tenant's income and a statement declaring that the tenant's income does not exceed the applicable income limit.

Please complete the form below for the above referenced tenant and return to me at the above address. The tenant has consented below to the release of their income and this statement. Your prompt return of this form will be appreciated. If you have any questions, please do not hesitate to contact me at (Phone Number).

Sincerely,

Owner/Managing Agent

I hereby consent to the release of the information requested.

Signature of Applicant/Tenant

Date

PHA STATEMENT

DATE: _____

As per the requirements of the Internal Revenue Code, the above household's gross income was calculated and certified on (Date) and found not to exceed (Percentage*) percent of the median income limit for that year. Back-up documentation was collected from the tenant to verify the gross income.

Name of Public Housing Authority

Signature of Public Housing Authority Rep.

* This will be 50% or 60%, depending on which minimum set-aside was selected by the owner. The owner/agent should fill this in for the PHA

UNDER \$5,000 ASSET CERTIFICATION

For households whose combined net assets do not exceed \$5,000.
Complete only one form per household; include assets of children.

Household Name: _____ Unit No. _____

Development Name: _____ City: _____

Complete all that apply for 1 through 4:

1. My/our assets include:

(A) Cash Value*	(B) Int. Rate	(A*B) Annual Income	Source	(A) Cash Value*	(B) Int. Rate	(A*B) Annual Income	Source
\$ _____	_____	\$ _____	Savings Account	\$ _____	_____	\$ _____	Checking Account
\$ _____	_____	\$ _____	Cash on Hand	\$ _____	_____	\$ _____	Safety Deposit Box
\$ _____	_____	\$ _____	Certificates of Deposit	\$ _____	_____	\$ _____	Money market funds
\$ _____	_____	\$ _____	Stocks	\$ _____	_____	\$ _____	Bonds
\$ _____	_____	\$ _____	IRA Accounts	\$ _____	_____	\$ _____	401K Accounts
\$ _____	_____	\$ _____	Keogh Accounts	\$ _____	_____	\$ _____	Trust Funds
\$ _____	_____	\$ _____	Equity in real estate	\$ _____	_____	\$ _____	Land Contracts
\$ _____	_____	\$ _____	Lump Sum Receipts	\$ _____	_____	\$ _____	Capital investments
\$ _____	_____	\$ _____	Life Insurance Policies (excluding Term)				
\$ _____	_____	\$ _____	Other Retirement/Pension Funds not named above:				_____
\$ _____	_____	\$ _____	Personal property held as an investment** :				_____
\$ _____	_____	\$ _____	Other (list):				_____

PLEASE NOTE: Certain funds (e.g., Retirement, Pension, Trust) may or may not be (fully) accessible to you. Include only those amounts which are.

*Cash value is defined as market value minus the cost of converting the asset to cash, such as broker's fees, settlement costs, outstanding loans, early withdrawal penalties, etc.

**Personal property held as an investment may include, but is not limited to, gem or coin collections, art, antique cars, etc. Do not include necessary personal property such as, but not necessarily limited to, household furniture, daily-use autos, clothing, assets of an active business, or special equipment for use by the disabled.

2. ☐ Within the past two (2) years, I/we have sold or given away assets (including cash, real estate, etc.) for more than \$1,000 below their fair market value (FMV). Those amounts* are included above and are equal to a total of: \$ _____ (*the difference between FMV and the amount received, for each asset on which this occurred).
3. ☐ I/we have not sold or given away assets (including cash, real estate, etc.) for less than fair market value during the past two (2) years.
4. ☐ I/we do not have any assets at this time.

The net family assets (as defined in 24 CFR 813.102) above do not exceed \$5,000 and the annual income from the net family assets is \$ _____. This amount is included in total gross annual income.

Under penalty of perjury, I/we certify that the information presented in this certification is true and accurate to the best of my/our knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

Applicant/Tenant

Date

Applicant/Tenant

Date

**LOW INCOME TAX CREDIT
STUDENT STATUS VERIFICATION**

Exhibit C13

Property Name: _____

LITC #: _____

Household Name: _____

Unit #: _____

Check A, B, or C, as applicable (note that students include those attending public or private elementary schools, middle or junior high schools, senior high schools, colleges universities, technical, trade, or mechanical schools, but does not include those attending on-the-job training courses):

- A. _____ Household contains at least one occupant who is not a student, has not been a student, and will not be a student for five or more months during the current and/or upcoming calendar year (months need not be consecutive). If this item is checked, no further information is needed.
- B. _____ Household contains all students, but is qualified because the following occupant(s) _____ is/are a part-time student(s). If this item is checked, attach third party verification for each student.
- C. _____ Household contains all full-time students for five or more months during the current and/or upcoming calendar year (months need not be consecutive). If this item is checked, attach third party verification and questions 1-5, below must be completed:

1. Is at least one student receiving assistance under Title IV of the Social Security Act? ☐ Yes ☐ No
2. Was at least one student previously under the care and placement responsibility of the state agency responsible for administering foster care? (provide documentation of participation) ☐ Yes ☐ No
3. Does at least one student participate in a program receiving assistance under the Job Training Partnership Act, Workforce Investment Act, or under other similar, federal, State or local laws? (attach documentation of participation) ☐ Yes ☐ No
4. Is at least one student a single parent with child(ren) *and* this parent is not a dependent of another individual *and* the child(ren) is/are not dependent(s) of someone other than a parent? ☐ Yes ☐ No
5. Are the students married and entitled to file a joint tax return? ☐ Yes ☐ No

Households composed entirely of full-time student that are income eligible and satisfy one or more of the above conditions are considered eligible. If questions 1-5 are marked NO, or verification does not support the exception indicated, the household is considered an ineligible student household.

Under penalty of perjury, I certify that the information presented in this certification is true and accurate to the best of my knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

OWNER/MANAGER

DATE

SIGNATURE OF APPLICANT / RESIDENT

DATE

PRINT NAME OF APPLICANT / RESIDENT

STUDENT VERIFICATION**THIS SECTION TO BE COMPLETED BY MANAGEMENT AND EXECUTED BY STUDENT**

This Student Verification is being delivered in connection with the undersigned's eligibility for residency in the following apartment:

Project Name: _____

Building Address: _____

Unit Number if assigned: _____

I hereby grant disclosure of the information requested below from _____
Name of Educational Institution

Signature

Date

Printed Name

Student ID#

Return Form to:

THIS SECTION TO BE COMPLETED BY EDUCATIONAL INSTITUTION

The above-named individual has applied for residency or is currently residing in housing that requires verification of student status. Please provide the information requested below:

Is the above-named individual a student at this educational institution? **YES** **NO**

If so, part-time or full-time? **PART-TIME** **FULL-TIME**

If full-time, the date the student enrolled as such: _____

Expected date of graduation: _____

I hereby certify that the information supplied in this section is true and complete to the best of my knowledge.

Signature: _____

Date: _____

Print your name: _____

Tel. #: _____

Title: _____

Educational Institution: _____

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

NJHMFA LOW INCOME TAX CREDIT TENANT INCOME SELF CERTIFICATION

(FOR 100% LITC PROPERTIES RECERTIFICATIONS ONLY)

Effective Date: _____

Move-in Date: _____
(MM/DD/YYYY)

PART I. DEVELOPMENT DATA

Property Name: _____ County: _____ BIN #: NJ
Address: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						
7						
8						

TOTAL ANNUAL HOUSEHOLD INCOME: \$ _____
(INCLUDE INCOME FROM ASSETS)

Tenant Paid Rent \$ _____
Utility Allowance \$ _____

GROSS RENT FOR UNIT: _____
(Tenant paid rent plus Utility Allowance &
other non-optional charges) \$ _____

Maximum Rent Limit for this unit: \$ _____

ARE ALL OCCUPANTS FULL TIME STUDENTS? ☐ yes ☐ no
If yes, circle exception and attach documentation

Student Exception:

- 1 TANF assistance
- 2 Job Training Program
- 3 Single parent/dependent child
- 4 Married/joint return

HOUSEHOLD CERTIFICATION & SIGNATURES

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_____ Signature	_____ (Date)	_____ Signature	_____ (Date)
_____ Signature	_____ (Date)	_____ Signature	_____ (Date)

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

Federal Regulations**Reg § 1.42-5. Monitoring compliance with low-income housing credit requirements.**

Caution: Reg § 1.42-5, following, is effective after 12/31/2000. For Reg § 1.42-5, effective before 1/1/2001, see above.

(a) Compliance monitoring requirement.

(1) In general. Under section 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the State or local housing credit agency (“Agency”) (or an agent of, or other private contractor hired by, the Agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware. These regulations only address compliance monitoring procedures required of Agencies. The regulations do not address forms and other records that may be required by the Service on examination or audit. For example, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor information related to the first year of the credit period so that the transferee can substantiate credits claimed.

(2) Requirements for a monitoring procedure.

(i) In general. A procedure for monitoring for noncompliance under section 42(m)(1)(B)(iii) must include—

(A) The recordkeeping and record retention provisions of paragraph (b) of this section;

(B) The certification and review provisions of paragraph (c) of this section;

(C) The inspection provision of paragraph (d) of this section; and

(D) The notification-of-noncompliance provisions of paragraph (e) of this section.

(ii) Order and form. A monitoring procedure will meet the requirements of section 42(m)(1)(B)(iii) if it contains the substance of these provisions. The particular order and form of the provisions in the allocation plan is not material. A monitoring procedure may contain additional provisions or requirements.

(b) Recordkeeping and record retention provisions.

(1) Recordkeeping provision. Under the recordkeeping provision, the owner of a low-income housing project must be required to keep records for each qualified low-income building in the project that show for each year in the compliance period—

- (i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (ii) The percentage of residential rental units in the building that are low-income units;
- (iii) The rent charged on each residential rental unit in the building (including any utility allowances);
- (iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under section 42(g)(2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989);
- (v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- (vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);
- (vii) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner

declaring that the tenant's income does not exceed the applicable income limit under section 42(g);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(2) Record retention provision. Under the record retention provision, the owner of a low-income housing project must be required to retain the records described in paragraph (b)(1) of this section for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(3) Inspection record retention provision. Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) Certification and review provisions.

(1) Certification. Under the certification provision, the owner of a low-income housing project must be required to certify at least annually to the Agency that, for the preceding 12-month period—

(i) The project met the requirements of:

(A) The 20-50 test under section 42(g)(1)(A), the 40-60 test under section 42(g)(1)(B), or the 25-60 test under sections 42(g)(4) and 142(d)(6) for New York City, whichever minimum set-aside test was applicable to the project; and

(B) If applicable to the project, the 15-40 test under sections 42(g)(4) and 142(d)(4)(B) for “deep rent skewed” projects;

(ii) There was no change in the applicable fraction (as defined in section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;

(iii) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of this section. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);

(iv) Each low-income unit in the project was rent-restricted under section 42(g)(2);

(v) All units in the project were for use by the general public (as defined in Sec. 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under paragraph (c)(1) of this section. In addition, the owner must state whether the violation has been corrected;

(vii) There was no change in the eligible basis (as defined in section 42(d)) of any building in the project, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

(viii) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(ix) If a low-income unit in the building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

(x) If the income of tenants of a low-income unit in the project increased above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439); and

(xii) All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).

(2) *Review.* The review provision must—

(i) Require that the Agency review the certifications submitted under paragraph (c)(1) of this section for compliance with the requirements of section 42;

(ii) Require that with respect to each low-income housing project—

(A) The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is

placed in service and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(B) At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(iii) Require that the Agency randomly select which low-income units and tenant records are to be inspected and reviewed by the Agency. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).

(3) *Frequency and form of certification.* A monitoring procedure must require that the certifications and reviews of paragraph (c)(1) and (2) of this section be made at least annually covering each year of the 15-year compliance period under section 42(i)(1). The certifications must be made under penalty of perjury. A monitoring procedure may require certifications and reviews more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification.

(4) *Exception for certain buildings.*

(i) In general. The review requirements under paragraph (c)(2)(ii) of this section may provide that owners are not required to submit, and the Agency is not required to review, the tenant income certifications, supporting documentation, and rent records for buildings financed by the Rural Housing Service (RHS), formerly known as Farmers Home Administration, under the section 515 program, or buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed

with the proceeds of obligations the interest on which is exempt from tax under section 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the Agency must meet the requirements of paragraph (c)(4)(ii) of this section.

(ii) Agreement and review. The Agency must enter into an agreement with the RHS or tax-exempt bond issuer. Under the agreement, the RHS or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the Agency. The Agency may assume the accuracy of the information provided by RHS or the tax-exempt bond issuer without verification. The Agency must review the information and determine that the income limitation and rent restriction of section 42(g)(1) and (2) are met. However, if the information provided by the RHS or tax-exempt bond issuer is not sufficient for the Agency to make this determination, the Agency must request the necessary additional income or rent information from the owner of the buildings. For example, because RHS determines tenant eligibility based on its definition of “adjusted annual income,” rather than “annual income” as defined under Section 8, the Agency may have to calculate the tenant's income for section 42 purposes and may need to request additional income information from the owner.

(iii) Example. The exception permitted under paragraph (c)(4)(i) and (ii) of this section is illustrated by the following example.

Example An Agency selects for review buildings financed by the RHS. The Agency has entered into an agreement described in paragraph (c)(4)(ii) of this section with the RHS with respect to those buildings. In reviewing the RHS-financed buildings, the Agency obtains the tenant income and rent information from the RHS for 20 percent of the low-income units in each of those buildings. The Agency calculates the tenant income and rent to determine whether the tenants meet the income and rent limitation of section 42(g)(1) and (2). In order to make this determination, the Agency may need to request additional income or rent information from the owners of the RHS buildings if the information provided by the RHS is not sufficient.

(5) *Agency reports of compliance monitoring activities.* The Agency must report its compliance monitoring activities annually on Form 8610, “Annual Low-Income Housing Credit Agencies Report.”

(d) Inspection provision.

(1) In general. Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is a separate requirement from any tenant file review under paragraph (c)(2)(ii) of this section.

(2) Inspection standard. For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency must review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine—

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii) to determine by inspection whether the project meets local health, safety, and building codes.

(3) Exception from inspection provision. An Agency is not required to inspect a building under this paragraph (d) if the building is financed by the RHS under the section 515 program, the RHS inspects the building (under 7 CFR part 1930), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results.

(4) Delegation. An Agency may delegate inspection under this paragraph (d) to an Authorized Delegate retained under paragraph (f) of this section. Such Authorized Delegate, which may include HUD or a HUD-approved inspector, must notify the Agency of the inspection results.

(e) Notification-of-noncompliance provision.

(1) In general. Under the notification-of-noncompliance provisions, the Agency must be required to give the notice described in paragraph (e)(2)

of this section to the owner of a low-income housing project and the notice described in paragraph (e)(3) of this section to the Service.

(2) *Notice to owner.* The Agency must be required to provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in paragraph (c)(1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c)(2)(ii) of this section, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of section 42.

(3) *Notice to Internal Revenue Service.*

(i) In general. The Agency must be required to file Form 8823, “Low-Income Housing Credit Agencies Report of Noncompliance,” with the Service no later than 45 days after the end of the correction period (as described in paragraph (e)(4) of this section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under section 42(c)(1)(A) is noncompliance that must be reported to the Service under this paragraph (e)(3). If an Agency reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance. If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, the Agency is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

(ii) *Agency retention of records.* An Agency must retain records of noncompliance or failure to certify for 6 years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency must retain the certifications and records described in paragraph (c) of this section for 3 years from the end of the calendar year the Agency receives the certifications and records.

(4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any

missing certifications and bring the project into compliance with the provisions of section 42. The correction period is not to exceed 90 days from the date of the notice to the owner described in paragraph (e)(2) of this section. An Agency may extend the correction period for up to 6 months, but only if the Agency determines there is good cause for granting the extension.

(f) Delegation of Authority.

(1) Agencies permitted to delegate compliance monitoring functions.

(i) In general. An Agency may retain an agent or other private contractor (“ Authorized Delegate”) to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Agency, except for the responsibility of notifying the Service under paragraphs (5) and (e)(3) of this section. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation under paragraph (c)(1) and (2) of this section, the right to inspect buildings and records as described in paragraph (d) of this section, and the responsibility of notifying building owners of lack of certification or noncompliance under paragraph (e)(2) of this section. The Authorized Delegate must notify the Agency of any noncompliance or failure to certify.

(ii) Limitations. An Agency that delegates compliance monitoring to an Authorized Delegate under paragraph (f)(1)(i) of this section must use reasonable diligence to ensure that the Authorized Delegate properly performs the delegated monitoring functions. Delegation by an Agency of compliance monitoring functions to an Authorized Delegate does not relieve the Agency of its obligation to notify the Service of any noncompliance of which the Agency becomes aware.

(2) Agencies permitted to delegate compliance monitoring functions to another Agency. An Agency may delegate all or some of its compliance monitoring responsibilities for a building to another Agency within the State. This delegation may include the responsibility of notifying the Service under paragraph (e)(3) of this section.

(g) Liability. Compliance with the requirements of section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of section 42 does not make the Agency liable for an owner's noncompliance.

(h) Effective date. Allocation plans must comply with these regulations by June 30, 1993. The requirement of section 42(m)(1)(B)(iii) that allocation plans contain a procedure for monitoring for noncompliance becomes effective on January 1, 1992, and applies to buildings for which a low-income housing credit is, or has been, allowable at any time. Thus, allocation plans must comply with section 42(m)(1)(B)(iii) prior to June 30, 1993, the effective date of these regulations. An allocation plan that complies with these regulations, with the notice of proposed rulemaking published in the Federal Register on December 27, 1991, or with a reasonable interpretation of section 42(m)(1)(B)(iii) will satisfy the requirements of section 42(m)(1)(B)(iii) for periods before June 30, 1993. Section 42(m)(1)(B)(iii) and these regulations do not require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992. However, if an Agency becomes aware of noncompliance that occurred prior to January 1, 1992, the Agency is required to notify the Service of that noncompliance. In addition, the requirements in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this section (involving recordkeeping and annual owner certifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this section (involving tenant file reviews and physical inspections of existing projects, and the physical inspection standard) are applicable January 1, 2001. The requirement in paragraph (c)(2)(ii)(A) of this section (involving tenant file reviews and physical inspections of new projects) is applicable for buildings placed in service on or after January 1, 2001. The requirements in paragraph (c)(5) of this section (involving Agency reporting of compliance monitoring activities to the Service) and paragraph (e)(3)(i) of this section (involving Agency reporting of corrected noncompliance or failure to certify within 3 years after the end of the correction period) are applicable January 14, 2000.

T.D. 8430, 9/1/92, amend T.D. 8563, 9/30/94, T.D. 8859, 1/13/2000.

REVENUE RULE 92-61

1992-2 C.B. 7, 1992-32 I.R.B. 4.

Internal Revenue Service
Revenue Ruling

FULL-TIME RESIDENT MANAGER IN BUILDING ELIGIBLE FOR LOW-INCOME
HOUSING CREDIT

Published: August 10, 1992

Section 42. Low-Income Housing Credit

(See Also Sections 103, 142; 1.103-8.)

Full-time resident manager in building eligible for low-income housing credit. The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

ISSUE

If a unit in a qualified low-income building is occupied by a full-time resident manager, is the adjusted basis of that unit included in the building's eligible basis under section 42(d)(1) of the Internal Revenue Code and is that unit included in the applicable fraction under section 42(c)(1)(B) for determining the qualified basis of the building?

FACTS

At the beginning of 1990, LP, a limited partnership with a calendar tax year, placed in service a newly constructed apartment building that qualified for the low-income housing credit under section 42(a) of the Code. LP elected to meet the 40-60 test of section 42(g)(1)(B), which requires that at least 40 percent of the units in the building be rent-restricted and occupied by tenants whose incomes are 60 percent or less of area median gross income. Throughout 1990, the first year of the building's credit period, 69 of the 70 units in the building were rent-restricted and occupied by tenants whose incomes were 60 percent or less of area median gross income. The remaining unit in the building was occupied by a resident manager who was hired by LP to manage the building and to be on call to attend to the maintenance needs of the other tenants. All of the units in the building meet the same standard of quality and have the same amount of floor space.

LAW AND ANALYSIS

Section 42(a) of the Code provides that the amount of the low-income housing credit determined for any tax year in the credit period is an amount equal to the applicable percentage of the qualified basis of each low-income building.

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to the applicable fraction, determined as of the close of the tax year, of the eligible basis of the building, determined under section 42(d)(5).

Sections 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(B) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building. In general, under section 42(i)(3)(B), a low-income unit is any unit that is rent-restricted and occupied by individuals meeting the income limitation applicable to the building.

Section 42(d)(1) of the Code provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in section 42(d)(4)(B), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation used in common areas or provided as comparable amenities to all residential rental units in the building.

The legislative history of section 42 of the Code states that residential rental property, for purposes of the low-income housing credit, has the same meaning as residential rental property within section 103. The legislative history of section 42 further states that residential rental property thus includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. 2 H.R.Conf.Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89. Under section 1.103-8(b)(4) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental units are considered residential rental property. Section 1.103-8(b)(4)(iii) provides that facilities that are functionally related and subordinate to residential rental units include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the project. The examples given by section 1.103-8(b)(4)(iii) of facilities reasonably required for a project specifically include units for resident managers or maintenance personnel.

Accordingly, the unit occupied by LP's resident manager is residential rental property for purposes of section 42 of the Code. The adjusted basis of the unit is includible in the building's eligible basis under section 42(d)(1). The inclusion of the adjusted basis of the resident manager's unit in eligible basis will not be affected by a later conversion of that apartment to a residential rental unit.

The term "residential rental unit" has a narrower meaning under section 42 of the Code than residential rental property. As noted above, under the legislative history of section 42, residential rental property includes facilities for use by the tenants and other facilities reasonably required by the project, as well as residential rental units. Under section 1.103-8(b)(4) of the regulations, units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units.

LP's resident manager's unit is properly considered a facility reasonably required by the project, not a residential rental unit for purposes of section 42 of the Code. Consequently, the unit is not included in either the numerator or denominator of the applicable fraction under section 42(c)(1)(B) for purposes of determining the qualified basis of the building for the first year of the credit period.

Therefore, as of the end of the first year of the credit period, the adjusted basis of the unit occupied by LP's resident manager is included in the building's eligible basis under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B). Because all of the residential rental units in LP's building are low-income units, the applicable fraction for the building is "one" (69/69, using the unit fraction).

If in a later year of the credit period, the resident manager's unit is converted to a residential rental unit, the unit will be included in the denominator of the applicable fraction for that year. If the unit also becomes a low-income unit in that year, the unit will be included in the numerator of the applicable fraction for that year. In this case, the applicable fraction will also be "one" (70/70, using the unit fraction).

HOLDING

The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

EFFECTIVE DATE

The Internal Revenue Service will not apply this revenue ruling to any building placed in service prior to September 9, 1992, or to any building receiving an allocation of credit prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling. Similarly, the Service will not apply this revenue ruling to any building described in section 42(h)(4)(B) of the Code with respect to which bonds were issued prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Paul F. Handleman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Handleman on (202) 622-3040 (not a toll-free call).

Rev. Rul. 92-61, 1992-2 C.B. 7, 1992-32 I.R.B. 4.

annuitized. The fair market value of such an annuity contract is permitted to be determined using the methodology provided in § 1.401(a)(9)–6, A–12, with the following modifications:

(i) All front-end loads and other non-recurring charges assessed in the twelve months immediately preceding the conversion must be added to the account value.

(ii) Future distributions are not to be assumed in the determination of the actuarial present value of additional benefits.

(iii) The exclusions provided under § 1.401(a)(9)–6, A–12(c)(1) and (c)(2), are not to be taken into account.

(c) *Effective/applicability date.* The provisions of this paragraph A–14 are applicable to any conversion in which an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005. However, for annuity contracts distributed or treated as distributed from a traditional IRA on or before December 31, 2008, taxpayers may instead apply the valuation methods in § 1.408A–4T (as it appeared in the April 1, 2008, edition of 26 CFR part 1) and Revenue Procedure 2006–13 (2006–1 CB 315) (See § 601.601(d)(2)(ii)(b)).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–17271 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9406]

RIN 1545–BH03

Modifications to Subpart F Treatment of Aircraft and Vessel Leasing Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9406) that was published in the **Federal Register** on Thursday, July 3, 2008 (73 FR 38113) addressing the treatment of certain income and assets related to the leasing of aircraft or vessels in foreign

commerce under sections 367, 954, and 956 of the Internal Revenue Code. The regulations reflect statutory changes made by section 415 of the American Jobs Creation Act of 2004. In general, the regulations will affect the United States shareholders of controlled foreign corporations that derive income from the leasing of aircraft or vessels in foreign commerce and U.S. persons that transfer property subject to these leases to a foreign corporation.

DATES: This correction is effective July 29, 2008, and is applicable on July 3, 2008.

FOR FURTHER INFORMATION CONTACT:

Concerning the temporary regulations under section 367, John H. Seibert at (202) 622–3860; concerning the temporary regulations under section 954 or 956, Paul J. Carlino at (202) 622–3840 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subjects of this document are under sections 367, 954, and 956 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9406) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.954–2(c)(2) is amended by adding paragraph (vii) to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(c) * * *

(2) * * *

(vii) [Reserved]. For further guidance, see § 1.954–2T(c)(2)(vii).

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–17269 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9420]

RIN 1545–BC22

Section 42 Utility Allowance Regulations Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The final regulations update the utility allowance regulations to provide new options for estimating tenant utility costs. The final regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.

DATES: *Effective Date:* These regulations are effective July 29, 2008. *Applicability Date:* For dates of applicability see § 1.42–12(a)(4).

FOR FURTHER INFORMATION CONTACT: David Selig (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code (Code). On June 19, 2007, the IRS and Treasury Department published in the **Federal Register** proposed regulations under section 42(g)(2)(B)(ii) (72 FR 33703). Written and electronic comments responding to the proposed regulations were received and a public hearing was held on the proposed regulations on October 9, 2007. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

General Overview

Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. A qualified low-income building is defined in section 42(c)(2) as any building that is part of a qualified low-income housing project.

A qualified low-income housing project is defined in section 42(g)(1) as any project for residential rental property if the project meets one of the following tests elected by the taxpayer: (1) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (2) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. If a taxpayer does not meet the elected test, the project is not eligible for the section 42 credit.

Under section 42(g)(4), section 142(d)(2)(B) applies when determining whether any project is a qualified low-income housing project under section 42(g)(1). Section 142(d)(2)(B) provides that the income of individuals and area median gross income is determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937. Under Rev. Rul. 94-57 (1994-2 CB 5), taxpayers may rely on a list of income limits released by the Department of Housing and Urban Development (HUD) until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later.

In order to qualify as a rent-restricted unit within the meaning of section 42(g)(2), the gross rent for the unit must not exceed 30 percent of the imputed income limitation applicable to the unit. Section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary after taking into account the determinations under section 8 of the United States Housing Act of 1937.

Section 1.42-10(a) provides that if utility costs (other than telephone) for a residential rental unit are paid directly by the tenant, then the gross rent for that unit includes the applicable utility allowance as determined under § 1.42-10. Section 1.42-10(b) provides rules for calculating the appropriate utility

allowance based upon whether (1) the building receives rental assistance from the Farmers Home Administration (FmHA), now known as the Rural Housing Service; (2) the building has any tenant that receives FmHA rental assistance; (3) the building is not described in (1) or (2) above and the building's rents and utility allowances are reviewed by HUD on an annual basis; or (4) the building is not described in (1), (2), or (3) above (other buildings).

Currently, under § 1.42-10(b)(4), other buildings generally use the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program or use a local utility company estimate. The local utility company estimate may be obtained by any interested party (including a low-income tenant, a building owner, or a State or local housing credit agency (Agency)).

The proposed regulations proposed two additional options for calculating utility allowances. The first option would permit a building owner to obtain a utility estimate for each unit in a building from the Agency that has jurisdiction over the building (the Agency estimate). The Agency estimate must take into account the local utility rates data, property type, climate variables by region in the State, taxes and fees on utility charges, and property building materials and mechanical systems. An Agency may also use actual utility company usage data and rates for the building. The second option would permit a building owner to calculate utility allowances using the "HUD Utility Schedule Model" found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html> (or successor URL). The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Survey (RECS) conducted by the Department of Energy. RECS data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric (lighting and refrigeration). The HUD Utility Schedule Model incorporates building location and climate.

Summary of Comments and Explanation of Changes

Exclusions From Utility Allowance

Prior to these final regulations, § 1.42-10(a) provided for the exclusion of telephone costs in determining the amount of the utility allowance to be included in gross rent. The proposed regulations excluded cable television costs as well as telephone costs. The

final regulations retain the exclusions for cable television and telephone costs and also exclude Internet costs. The IRS and Treasury Department believe it is appropriate to exclude cable television and Internet costs as comparable to telephone costs.

Additional Option for Determining Utility Allowances

Commentators stated that the Agency estimate in the proposed regulations may be administratively burdensome for some Agencies. As an alternative, commentators suggested adding an option that would allow utility estimates to be calculated by a state-certified engineer or other qualified professional. The commentators specified that, under this option, computer software could be developed that would estimate the energy or water and sanitary sewer service cost for each type of unit in a building. The estimates would be determined based on the applicable current local utility billing rate schedule and would be applied to all comparable units in the building using specific information about the design, materials, equipment, and location of the building.

A computer software model that incorporates specific information about the design and location of the building for which the utility allowances are being developed, and that can be updated with actual consumption data and with consumption estimates as new efficiency measures and improvements are undertaken, would provide more accurate estimates of utility consumption. Therefore, the final regulations also include a new option allowing building owners to retain the services of a qualified professional to calculate utility allowances based on an energy consumption model.

The use of this new option is subject to several special rules. First, the energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. Second, the utility estimates must be calculated by either (1) a properly licensed engineer or (2) a qualified professional approved by the Agency that has jurisdiction over the building (together, qualified professional). The qualified professional and the building owner must not be related within the meaning of section 267(b) or 707(b). Third, the building owner must furnish a copy of the estimates derived from the energy consumption model to the Agency and make copies of the estimates available to

all tenants in the building. Finally, the building owner must pay for all costs incurred in obtaining the utility estimates from the qualified professional and providing the estimates to the Agency and tenants.

Default Option/Option Ordering

One commentator suggested that the final regulations should provide a default option because, in the absence of a definitive standard for determining utility allowances, building owners would use the option that yields the lowest utility estimates. Commentators further requested clarification as to which option should be used when multiple options are available, whether building owners may use different options for different utilities, and whether owners may change the options used for calculating utilities from time to time.

An energy consumption model developed by a qualified professional that takes into account specific information about the design and location of the building for which the utility allowances are being developed should produce the most accurate utility estimates. It is expected that this more accurate model will be the model most commonly used by most building owners, particularly those with buildings that are not very old. However, if a building owner selects an option that yields higher utility allowances, the building owner should be free to accept a lower amount of rent from tenants. Therefore, there is no need for a stated default option or option ordering rule. Further, the final regulations neither prohibit using different options for different utilities nor prohibit changing the options used for calculating utilities. If an Agency determines that a building owner has understated the utility allowances for the building under the particular option chosen by the owner for calculating the utility allowance, and the building's units are not rent-restricted units under section 42(g)(2) as a result, the Agency must report the noncompliance on Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition*.

Application of Newly Calculated Utility Allowances

Under current § 1.42–10(c) of the regulations, if the applicable utility allowance for units changes, the new utility allowance must be used to compute gross rent of rent-restricted units due 90 days after the change (the 90-day period). The proposed regulations limited the effective date of any new utility allowances to the earlier

of the date the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period. The proposed regulations also modified § 1.42–10(c) by requiring that a building owner must review at least annually the basis on which utility allowances have been established and must update the applicable utility allowance. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

Commentators suggested that building owners should be obligated to adjust utility allowances when utility rates increase by a stated percentage, for example, 10 percent, which is the rule for revising utility allowance schedules for PHAs under 24 CFR 982.517(c). This HUD rule provides that a PHA must review its schedule of utility allowances each year and revise its allowance for a utility category if the utility rate has changed by 10 percent or more since the utility allowance schedule was last revised. The commentators did not address decreases in utility rates. A commentator also suggested that the final regulations should require an Agency to review or have owners review local utility rates quarterly to determine if rates have increased sufficiently to require an adjustment. A different commentator suggested limiting reviews to no more than once per year.

The IRS and Treasury Department do not believe that fluctuations in utility rates within a given year should trigger recalculations of utility allowances more than once a year. The IRS and Treasury Department do not believe that the additional burden of updating the utility allowances more than once a year is warranted at this time. Utility rates generally do not change more than once a year, and yearly updated utility allowances would reflect average rates applicable to all tenants in a building from year to year. Therefore, the final regulations require building owners to calculate new utility allowances once during the calendar year regardless of any percentage change in utility rates. Building owners may choose, however, to calculate new utility allowances more frequently than once during the calendar year provided the owner complies with the requirements of these regulations, including the notification requirements to the Agency and tenants.

Another commentator suggested that new utility allowances should be implemented within 90 days after HUD publishes its annual income limits (which are used in determining section 42 rents), but in no case later than June

30 of any year. Section 42 rents under section 42(g)(2) may or may not increase depending on HUD's calculation of area median gross income. Therefore, the IRS and Treasury Department do not believe that the rules should require that the effective date of any new utility allowance coincide with the section 42 effective date of HUD's income lists. Building owners, however, may choose to implement any new utility allowances on the section 42 effective date of HUD's income lists.

To bring financial stability to a project during the beginning of its operations, the final regulations clarify that the building owner is not required to review the utility allowances, or implement new utility allowances, until the earlier of the date the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period.

Procedural Safeguards for Tenants

One commentator made several recommendations regarding procedural safeguards for tenants including: Owners should be required to give tenants 30 days notice before the effective date of any utility allowance; tenants should be provided with all information used in calculating the utility allowances; tenants should be given the opportunity to comment on the proposed allowances; and owners should be required to review those comments prior to the utility allowances becoming effective. The commentator believed that the new options for determining utility allowances should be available only after one full year of occupancy and one full year after the building is placed in service. A commentator also recommended that a building owner should be allowed to use the new options only if the owner provides all data to the Agency no later than February 15 and the Agency informs the owner whether the proposed utility allowances are approved by March 31.

To provide tenants with the opportunity to comment on proposed utility allowances to the Agency and building owner, the final regulations apply the existing disclosure requirement under current § 1.42–10(b)(4)(ii)(B) (regarding the utility company estimate) to an owner using a utility company estimate, the HUD Utility Schedule Model, or an energy consumption model. Therefore, an owner must submit copies of the proposed utility allowances to the Agency and make the proposed utility allowances available to all tenants in the building at the beginning of the 90-day period before the utility allowances are

used in determining the gross rents of rent-restricted units. Similarly, the final regulations require that any utility estimates obtained under the Agency estimate option must be made available to all tenants in the building at the beginning of the 90-day period. An Agency may continue to require additional information from the owner during the 90-day period.

Commentators suggested that the final regulations should limit the use of the HUD Utility Schedule Model to data for a twelve-month period ending in the most recent calendar year and require the owner to certify the accuracy of the data and the calculations of the utility allowances. However, the HUD Utility Schedule Model already incorporates consumption data derived from RECS data. Thus, building owners using this option need not be required to use consumption data for any particular twelve-month period. These final regulations, however, provide that the use of the energy consumption model is limited to consumption data for a twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period. In the case of newly constructed or renovated buildings with less than twelve months of consumption data, the energy consumption model allows a qualified professional to use consumption data for the twelve-month period of units of similar size and construction in the geographic area in which the building containing the units is located. Further, the final regulations require that utility rates used for the HUD Utility Schedule Model, the Agency estimate option, and the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period.

In addition to these safeguards, if an Agency determines that a building owner has understated the utility allowances for the owner's building under the particular option chosen, and, therefore, some or all of the units in the building are not rent-restricted units under section 42(g)(2), then the Agency must report the noncompliance to the Service on Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition*.

Commentators requested that building owners should be required to certify the estimate and the accuracy of the data used under the new options. Because Agencies may request additional information at any time during their mandatory review of proposed utility allowances, and must report any noncompliance to the Service, the final regulations do not require building owners to provide such certification.

Utility Allowances for Tenants With Special Needs

One commentator suggested that the calculation of utility allowances should take into account any special needs tenants such as people with disabilities who require high energy consumption equipment. Section 42 does not require that the owner's calculation of utility allowances be based on a tenant's particular use of utility services. If such a requirement were imposed, owners and Agencies would have to determine the utility allowance for the tenants in each unit, as opposed to allowances based on the size of the unit, which would greatly increase burden. Additionally, it is unclear whether it is appropriate to implement rules that might encourage tenants to be indifferent to their energy consumption. Such indifference could lead to cost overruns by owners, and the viability of low-income housing could be jeopardized. Therefore, the final regulations do not require the calculation of utility allowances based on consumption by particular tenants.

Calculation of Utility Company Estimate Option for Deregulated Utilities

Section 1.42-10(b)(4)(ii)(B) currently provides that any interested party (including an owner, low-income tenant, or Agency) may obtain a local utility company estimate for a unit. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the units is located. In light of utility services deregulation, the proposed regulations proposed to amend this option by requiring the interested party to obtain cost estimates from the local utility company that include combined rate charges from multiple utility companies.

Commentators thought this proposed amendment would require the interested party to obtain utility consumption estimates from every utility company providing the same utility service and stated that this would present an unworkable administrative burden in deregulated jurisdictions with multiple utility providers. In some jurisdictions, many utility providers may be available for a given building. The proposed amendment was not intended to require the interested party to obtain utility consumption estimates from every utility company providing the same utility service. The amendment was proposed to address deregulation by requiring the interested

party to obtain estimates for all the components of the utility service if the service is divided between two or more types of service providers (for example, electric generation and electric transmission). The final regulations clarify that, in the case of deregulated utility services, the interested party is required to obtain an estimate from only one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company furnishing the estimate must offer utility services to the building in order for that utility company's rates to be used in calculating utility allowances. The estimate should include all component charges for providing the utility service.

Agency Costs/Administrative Burden

One commentator requested that specific language be added to address when Agencies may charge a reasonable fee for making a determination pursuant to the Agency estimate option, and who bears the fee when a particular option is used. The proposed regulations provided that costs incurred in obtaining an Agency estimate are borne by the building owner. The final regulations adopt this provision, and further require building owners to pay for all costs incurred in obtaining the estimates under the HUD Utility Schedule Model and the energy consumption model and in providing estimates to Agencies and tenants.

Effective/Applicability Date

The proposed regulations were proposed to be effective for taxable years beginning on or after the date of publication of the final regulations in the **Federal Register**. A commentator suggested that the final regulations be effective earlier on the basis that if they are published after 2007, they would not be effective until 2009 for calendar year taxpayers. The IRS and Treasury Department believe that the burden associated with an earlier effective date is not warranted. Therefore, the final regulations do not adopt this suggestion. However, in order to allow a building owner to implement the utility allowances as of the first day of the owner's taxable year beginning on or after July 29, 2008, the final regulations provide that taxpayers may rely on the rules for determining utility allowances before the first day of the owner's taxable year beginning on or after July 29, 2008 provided that any utility allowances so calculated are effective no earlier than the first day of the owner's taxable year beginning on or after July 29, 2008.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the information has previously been reviewed and approved under OMB control number 1545-1102, and that the information required by these final regulations adds no new burden to the existing requirements. Accordingly, a Regulatory Flexibility Analysis under the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.42-10 is amended by:

- 1. Revising the first sentence of paragraph (a).
- 2. Revising paragraphs (b)(1), (b)(2), and (b)(3), and the introductory text of paragraph (b)(4).
- 3. Adding two sentences at the end of paragraph (b)(4)(ii)(A).
- 4. Adding three sentences after the second sentence in paragraph (b)(4)(ii)(B).
- 5. Adding paragraphs (b)(4)(ii)(C), (b)(4)(ii)(D), and (b)(4)(ii)(E).

- 6. Revising paragraph (c).
- 7. Adding paragraph (d).

The additions and revisions read as follows:

§ 1.42-10 Utility allowances.

(a) * * * If the cost of any utility (other than telephone, cable television, or Internet) for a residential rental unit is paid directly by the tenant(s), and not by or through the owner of the building, the gross rent for that unit includes the applicable utility allowance determined under this section. * * *

(b) *Applicable utility allowances*—(1) *Buildings assisted by the Rural Housing Service.* If a building receives assistance from the Rural Housing Service (RHS-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Rural Housing Service (RHS) for the building (whether or not the building or its tenants also receive other state or federal assistance).

(2) *Buildings with Rural Housing Service assisted tenants.* If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD)) is the applicable RHS utility allowance.

(3) *Buildings regulated by the Department of Housing and Urban Development.* If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

* * * * *

(ii) * * * (A) * * * However, if a local utility company estimate is obtained for any unit in the building under paragraph (b)(4)(ii)(B) of this section, a State or local housing credit agency (Agency) provides a building owner with an estimate for any unit in a building under paragraph (b)(4)(ii)(C) of this section, a cost estimate is calculated using the HUD Utility Schedule Model under paragraph

(b)(4)(ii)(D) of this section, or a cost estimate is calculated by an energy consumption model under paragraph (b)(4)(ii)(E) of this section, then the estimate under paragraph (b)(4)(ii)(B), (C), (D), or (E) becomes the applicable utility allowance for all rent-restricted units of similar size and construction in the building. Paragraphs (b)(4)(ii)(B), (C), (D), and (E) of this section do not apply to units to which the rules of paragraphs (b)(1), (2), (3), or (4)(i) of this section apply.

(B) * * * In the case of deregulated utility services, the interested party is required to obtain an estimate only from one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company must offer utility services to the building in order for that utility company's rates to be used in calculating utility allowances. The estimate should include all component deregulated charges for providing the utility service. * * *

(C) *Agency estimate.* A building owner may obtain a utility estimate for each unit in the building from the Agency that has jurisdiction over the building provided the Agency agrees to provide the estimate. The estimate is obtained when the building owner receives, in writing, information from the Agency providing the estimated per-unit cost of the utilities for units of similar size and construction for the geographic area in which the building containing the units is located. The Agency estimate may be obtained by a building owner at any time during the building's extended use period (see section 42(h)(6)(D)). Costs incurred in obtaining the estimate are borne by the building owner. In establishing an accurate utility allowance estimate for a particular building, an Agency (or an agent or other private contractor of the Agency that is a qualified professional within the meaning of paragraph (b)(4)(ii)(E) of this section) must take into account, among other things, local utility rates, property type, climate and degree-day variables by region in the State, taxes and fees on utility charges, building materials, and mechanical systems. If the Agency uses an agent or other private contractor to calculate the utility estimates, the agent or contractor and the owner must not be related within the meaning of section 267(b) or 707(b). An Agency may also use actual utility company usage data and rates for the building. However, use of the Agency estimate is limited to the building's consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period under paragraph (c)(1)

of this section and utility rates used for the Agency estimate must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the Agency (or an agent or other private contractor of the Agency that is a qualified professional within the meaning of paragraph (b)(4)(ii)(E) of this section) may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located.

(D) *HUD Utility Schedule Model.* A building owner may calculate a utility estimate using the “HUD Utility Schedule Model” that can be found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html> (or successor URL). Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section.

(E) *Energy consumption model.* A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model (energy consumption model). The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by either a properly licensed engineer or a qualified professional approved by the Agency that has jurisdiction over the building (together, qualified professional), and the qualified professional and the building owner must not be related within the meaning of section 267(b) or 707(b). Use of the energy consumption model is limited to the building’s consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section, and utility rates used for the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the qualified professional may use consumption data for the 12-month period of units of similar size and construction in the geographic area in

which the building containing the units is located.

(c) *Changes in applicable utility allowance—(1) In general.* If, at any time during the building’s extended use period (as defined in section 42(h)(6)(D)), the applicable utility allowance for units changes, the new utility allowance must be used to compute gross rents of the units due 90 days after the change (the 90-day period). For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due at the end of the 90-day period. A building owner using a utility company estimate under paragraph (b)(4)(ii)(B) of this section, the HUD Utility Schedule Model under paragraph (b)(4)(ii)(D) of this section, or an energy consumption model under paragraph (b)(4)(ii)(E) of this section must submit copies of the utility estimates to the Agency that has jurisdiction over the building and make the estimates available to all tenants in the building at the beginning of the 90-day period before the utility allowances can be used in determining the gross rent of rent-restricted units. An Agency may require additional information from the owner during the 90-day period. Any utility estimates obtained under the Agency estimate under paragraph (b)(4)(ii)(C) of this section must also be made available to all tenants in the building at the beginning of the 90-day period. The building owner must pay for all costs incurred in obtaining the estimates under paragraphs (b)(4)(ii)(B), (C), (D), and (E) of this section and providing the estimates to the Agency and the tenants. The building owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

(2) *Annual review.* A building owner must review at least once during each calendar year the basis on which utility allowances have been established and must update the applicable utility allowance in accordance with paragraph (c)(1) of this section. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

(d) *Record retention.* The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer’s records for purposes of § 1.6001–1(a).

■ **Par. 3.** Section 1.42–12 is amended by adding paragraph (a)(4) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) * * *

(4) *Utility allowances.* The first sentence in § 1.42–10(a), § 1.42–10(b)(1), (2), (3), and (4), the last two sentences in § 1.42–10(b)(4)(ii)(A), the third, fourth, and fifth sentences in § 1.42–10(b)(4)(ii)(B), § 1.42–10(b)(4)(ii)(C), (D), and (E), and § 1.42–10(c) and (d) are applicable to a building owner’s taxable years beginning on or after July 29, 2008. Taxpayers may rely on these provisions before the beginning of the building owner’s taxable year beginning on or after July 29, 2008 provided that any utility allowances calculated under these provisions are effective no earlier than the first day of the building owner’s taxable year beginning on or after July 29, 2008. The utility allowances provisions that apply to taxable years beginning before July 29, 2008 are contained in § 1.42–10 (see 26 CFR part 1 revised as of April 1, 2008).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–17268 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0695]

RIN 1625–AA00

Safety Zone; Maine; Sector Northern New England August Swim Events.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones during the month of August around the “Sprucewold Cabbage Island Swim,” “Tri for a Cure Triathlon,” “Greater Burlington YMCA Lake Swim,” “Y-Tri Triathlon,” and “Rockland Breakwater Swim” marine events while the events are in progress. These safety zones are needed to protect swimmers, event sponsors’ safety vessels, and others in the maritime community from the safety hazards that may arise from events of

Rev. Proc. 94-65, 1994-2 CB 798--IRC Sec(s). 42**October 11, 1994****1. Purpose**

This revenue procedure informs housing credit agencies (Agency) and owners of qualified low-income housing projects (owners) when a signed, sworn statement by a low-income tenant will satisfy the documentation requirement of section 1.42-5(b)(1)(vii) of the Income Tax Regulations.

2. Background

Section 1.42-5 provides the minimum requirements that an Agency's compliance monitoring procedure must contain to satisfy its compliance monitoring duties under section 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42-5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. The term "low-income tenant" refers to the individuals occupying a rent-restricted unit in a qualified low-income housing project whose annual income satisfies the section 42(g)(1) income limitation elected by the owner of the project. Examples of the documentation required under section 1.42-5(b)(1)(vii) include a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation. A verification of income from a third party is referred to as a "third party verification."

The Internal Revenue Service has determined that an owner may satisfy the documentation requirement of section 1.42-5(b)(1)(vii) for a low-income tenant's income from assets by obtaining a signed, sworn statement from the tenant or prospective tenant if (1) the tenant's or prospective tenant's Net Family assets do not exceed \$5,000, and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. See H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 544 (1993).

3. Scope

This revenue procedure applies to Agencies and owners of qualified low-income housing projects.

4. Procedure

.01 To determine a tenant's Net Family assets, owners and Agencies must use the definition of "Net Family assets" in 24 CFR 813.102, which provides definitions for the H.U.D. section 8 program.

.02 Except as provided in sections 4.03 and 4.04 of this revenue procedure, an Agency's monitoring procedure may provide that an owner may satisfy the

documentation requirement for income from assets in section 1.42-5(b)(1)(vii) for a low-income tenant whose Net Family assets do not exceed \$5,000 by annually obtaining a signed, sworn statement that includes the following:

(1) That the tenant's Net Family assets do not exceed \$5,000, and

(2) The tenant's annual income from Net Family assets.

.03 An Agency's monitoring procedure, however, may not permit an owner to rely on a low-income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual income from assets to satisfy the documentation requirement in section 1.42- 5(b)(1)(vii).

.04 An Agency's monitoring procedure may continue to require that an owner obtain documentation, other than the statement described in section 4.02 of this revenue procedure, to support a low-income tenant's annual certification of income from assets.

5. Effective Date

This revenue procedure is effective October 11, 1994.

Drafting Information

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Erickson at (202) 622-3040 (not a toll-free call).

Rev. Proc. 94-9, 1994-2 CB 555--IRC Sec(s). 42**December 16, 1993**

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Section 42.)

1. PURPOSE

This revenue procedure informs owners of low-income buildings how to make the election provided by section 13142(c)(1) of the Revenue Reconciliation Act of 1993 (RRA 1993), Pub. L. No. 103-66, 107 Stat. 416, 439-40 (1993). The election is available to owners of low-income buildings not covered by section 7108(e)(1) of the Revenue Reconciliation Act of 1989 (1989 Act), 1990-1 C.B. 210, 220, and allows these owners to determine the gross rent limitation for rent-restricted units under the number of bedrooms method of section 42(g)(2)(C) of the Internal Revenue Code.

2. BACKGROUND

Section 7108(e)(1) of the 1989 Act changed the method for computing the maximum allowable gross rent in determining if a unit is rent-restricted under section 42(g)(2)(A). This 1989 Act amendment applies to allocations of housing credit dollar amounts (Allocations) made after 1989 (or, to bond-financed buildings placed in service after 1989, to the extent section 42(h)(4) applies to the building). Prior to the 1989 Act amendment of section 42(g)(2), the maximum allowable gross rent for a rent-restricted unit under section 42(g)(2)(A) was determined on the basis of, and varied in accordance with, the actual number of individuals occupying the unit. Under that method, the maximum allowable rent for a rent-restricted unit varies in accordance with the number of individuals occupying the unit.

For a building subject to section 7108(e)(1) of the 1989 Act, a unit in a building is rent-restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit under section 42(g)(2)(C). Section 42(g)(2)(C) provides that the imputed income limitation applicable to a unit is the income limitation that would apply under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows: (i) for a unit that does not have a separate bedroom, 1 individual, and (ii) for a unit that has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom. This method is known as the number of bedrooms method.

Section 13142(c)(1) of the RRA 1993 allows an owner of a low-income building not covered by section 7108(e)(1) of the 1989 Act to elect to determine the gross rent limitation under the number of bedrooms method of section 42(g)(2)(C). Thus, owners of low-income buildings that received Allocations before 1990 (or of bond-financed buildings placed in service before 1990, to the extent section 42(h)(4)

applies to the building) can make the election provided for in section 13142(c)(1) of the RRA 1993.

Section 13142(c) of the RRA 1993 places the following conditions on this election: (1) the building owner must have met the requirements of section 42(m)(1)(B)(iii) (relating to state housing credit agency procedures for monitoring compliance with section 42); (2) the owner must make the election during the 180 day period beginning on the date of enactment of the RRA 1993; (3) the owner can only apply the number of bedrooms method to tenants first occupying any rent-restricted unit in the building after the date of the election, and the building owner must apply the number of bedrooms method to all rent restricted units whose tenants first occupy any unit in the building after the date of the election; and (4) once made, neither the building owner nor any subsequent owner may revoke the election.

3. SCOPE

This revenue procedure applies to owners of low-income buildings whose buildings were not subject to the amendments to section 42(g)(2) made by section 7108(e)(1) of the 1989 Act.

4. ELECTION PROCEDURE

To make the election to determine the gross rent limitation based on the number of bedrooms method, a building owner must-

.01 By February 7, 1994, send a written statement signed under penalty of perjury to the Internal Revenue Service Center, P.O. Box 245, Philadelphia, PA 19255, that states:

(a) That the building owner elects to use the number of bedrooms method of section 42(g)(2)(C);

(b) That the building owner meets the requirements of the procedures of the compliance monitoring plan in effect on the date of the election that is implemented by the state housing credit agency responsible for monitoring the building;

(c) That the building owner will only apply the elected method to tenants first occupying any unit in the building after the date of the election; and

(d) The building identification number assigned to the building, the building or project name, the building or project address, and the owner's name and taxpayer identification number. .02 Simultaneously send a copy of the election document to the state housing credit agency responsible for monitoring the building.

.03 Attach a copy of the election document to the building's Form 8609 filed for the tax year in which the building owner made the election.

.04 Keep a copy of the election document with the building's records. This copy must stay with the building's records regardless of any ownership transfer.

5. EFFECTIVE DATE OF ELECTION

An election under section 4 of this revenue procedure made after publication of the revenue procedure is effective when filed with the Internal Revenue Service Center in Philadelphia, PA. An election under section 13142(c)(1) to use the number of bedrooms method made before the publication of this revenue procedure is effective when made if: (1) the building owner complied with the requirements of section 13142(c) of the RRA 1993, and (2) the building owner perfects the election by following the requirements in section 4 of this revenue procedure.

6. EFFECTIVE DATE

This revenue procedure is effective for elections made on or after August 10, 1993.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Jeffrey A. Erickson at (202) 622-3040 (not a toll free call).

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Age.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">Birth CertificateBaptismal CertificateMilitary Discharge papersValid passportCensus document showing ageNaturalization certificateSocial Security Administration Benefits printout		
<ul style="list-style-type: none">Alimony or child support.	<ul style="list-style-type: none">Copy of separation or divorce agreement provided by ex-spouse or court indicating type of support, amount, and payment schedule.Written statement provided by ex-spouse or income source indicating all of above.If applicable, written statement from court/attorney that payments are not being received and anticipated date of resumption of payments.	<ul style="list-style-type: none">Telephone or in-person contact with ex-spouse or income source documented in file by the owner.	<ul style="list-style-type: none">Copy of most recent check, recording date, amount, and check number.Recent original letters from the court.	<ul style="list-style-type: none">Notarized statement or affidavit signed by applicant indicating amount received.If applicable, notarized statement or affidavit from applicant indicating that payments are not being received and describing efforts to collect amounts due.	<ul style="list-style-type: none">Amounts awarded but not received can be excluded from annual income only when applicants have made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

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	Third Party ^a		Documents Provided by Applicant			
	Written ^b	Oral ^c				
<ul style="list-style-type: none">Assets disposed of for less than fair market value.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">Certification signed by applicant that no member of family has disposed of assets for less than fair market value during preceding two years.If applicable, certification signed by the owner of the asset disposed of that shows:<ul style="list-style-type: none">Type of assets disposed of;Date disposed of;Amount received; andMarket value of asset at the time of disposition.	<ul style="list-style-type: none">Only count assets disposed of within a two-year period prior to examination or re-examination.	

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

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<ul style="list-style-type: none">Auxiliary apparatus.	<ul style="list-style-type: none">Written verification from source of costs and purpose of apparatus.Written certification from doctor or rehabilitation agency that use of apparatus is necessary to employment of any family member.In case where the disabled person is employed, statement from employer that apparatus is necessary for employment.	<ul style="list-style-type: none">Telephone or in-person contact with these sources documented in file by the owner.	<ul style="list-style-type: none">Copies of receipts or evidence of periodic payments for apparatus.		<ul style="list-style-type: none">The owner must determine if expense is to be considered medical or disability assistance.
<ul style="list-style-type: none">Care attendant for disabled family members.	<ul style="list-style-type: none">Written verification from attendant stating amount received, frequency of payments, hours of care.Written certification from doctor or rehabilitation agency that care is necessary to employment of family member.	<ul style="list-style-type: none">Telephone or in-person contact with source documented in file by the owner.	<ul style="list-style-type: none">Copies of receipts or cancelled checks indicating payment amount and frequency.	<ul style="list-style-type: none">Notarized statement or signed affidavit attesting to amounts paid.	<ul style="list-style-type: none">The owner must determine if this expense is to be considered medical or disability assistance.

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

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	Written ^b	Oral ^c			
<ul style="list-style-type: none">Child care expenses (including verification that a family member who has been relieved of child care is working, attending school, or looking for employment).	<ul style="list-style-type: none">Written verification from person who provides care indicating amount of payment, hours of care, names of children, frequency of payment, and whether or not care is necessary to employment or education.Verification of employment as required under Employment Income.Verification of student status (full or part-time) as required under Full-Time Student Status.	<ul style="list-style-type: none">Telephone or in-person contact with these sources (child care provider, employer, school) documented in file by the owner.	<ul style="list-style-type: none">Copies of receipts or cancelled checks indicating payments.For school attendance, school records, such as paid fee statements that show that the time and duration of school attendance reasonably corresponds to the period of child care.	<ul style="list-style-type: none">For verification of “looking for work,” details of job search effort as required by owner’s written policy.	<ul style="list-style-type: none">Allowance provided only for care of children 12 and younger.When same care provider takes care of children and disabled person, the owner must prorate expenses accordingly.Owners should keep in mind that costs may be higher in summer months and during holiday periods.The owner must determine which family member has been enabled to work.Care for employment and education must be prorated to compare to earnings.Costs must be “reasonable.”
<ul style="list-style-type: none">Citizenship				<ul style="list-style-type: none">Citizens must sign declaration certifying U.S. Citizenship.	<ul style="list-style-type: none">Owners may require applicants/residents to provide verification of citizenship.

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

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	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Current net family assets.	<ul style="list-style-type: none">Verification forms, letters or documents received from financial institutions, stock brokers, real estate agents, employers indicating the current value of the assets and penalties or reasonable costs to be incurred in order to convert nonliquid assets into cash.	<ul style="list-style-type: none">Telephone or in-person contact with appropriate source, documented in file by the owner.	<ul style="list-style-type: none">Passbooks, checking, or savings account statements, certificates of deposit, property appraisals, stock or bond documents, or other financial statements completed by financial institution.Copies of real estate tax statements, if tax authority uses approximate market value.Quotes from attorneys, stockbrokers, bankers, and real estate agents that verify penalties and reasonable costs incurred to convert asset to cash.Copies of real estate closing documents that indicate distribution of sales proceeds and settlement costs.	<ul style="list-style-type: none">Notarized statement or signed affidavit stating cash value of assets or verifying cash held at applicant's home or in safe deposit box.	<ul style="list-style-type: none">Use current balance in savings accounts and average monthly balance in checking accounts for last 6 months.Use cash value of all assets (the net amount the applicant would receive if the asset were converted to cash).NOTE: This information can usually be obtained simultaneously when verifying income from assets and employment (e.g., value of pension).

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Disability status.	<ul style="list-style-type: none">Verification from medical professional stating that individual qualifies under the definition of disability.	<ul style="list-style-type: none">Telephone or in-person contact with medical professional verifying qualification under the federal disability definition and documentation in the file of the conversation.	<ul style="list-style-type: none">Not appropriate.	<ul style="list-style-type: none">If a person receives Social Security Disability solely due to a drug or alcohol problem, the person is not considered disabled under housing law. A person that does not receive Social Security Disability may still qualify under the definition of a person with disabilities.Owners must not seek to verify information about a person's specific disability other than obtaining a professional's opinion of qualification under the definition of a person with disabilities.	

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration		
	Written ^b	Oral ^c				
<ul style="list-style-type: none">Dividend income and savings account interest income.	<ul style="list-style-type: none">Verification form completed by bank.	<ul style="list-style-type: none">Telephone or in-person contact with appropriate party, documented in file by the owner.	<ul style="list-style-type: none">Copies of current statements, bank passbooks, certificates of deposit, if they show required information (i.e., current rate of interest).Copies of Form 1099 from the financial institution, and verification of projected income for the next 12 months.Broker's quarterly statements showing value of stocks/bonds and earnings credited to the applicant.	<ul style="list-style-type: none">Not appropriate.	<ul style="list-style-type: none">The owner must obtain enough information to accurately project income over next 12 months.Verify interest rate as well as asset value.	

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

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Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Employment Income including tips, gratuities, overtime.	<ul style="list-style-type: none">Verification form completed by employer.	<ul style="list-style-type: none">Telephone or in-person contact with employer, specifying amount to be paid per pay period and length of pay period. Document in file by the owner.	<ul style="list-style-type: none">W-2 Forms, if applicant has had same employer for at least two years and increases can be accurately projected.Paycheck stubs or earning statements.	<ul style="list-style-type: none">Notarized statements or affidavits signed by applicant that describe amount and source of income.	<ul style="list-style-type: none">Always verify: frequency of gross pay (i.e., hourly, biweekly, monthly, bimonthly); anticipated increases in pay and effective dates; overtime.Require most recent 6-8 consecutive pay stubs; do not use check without stub.For a fee, additional information can be obtained from The Work Number 800-996-7556; First American Registry 800-999-0350; and Verifax 800-969-5100. Fees are valid project expenses. Information does not replace third-party verification.

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

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Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Family composition.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">Birth certificatesDivorce actionsDrivers' licensesEmployer recordsIncome tax returnsMarriage certificatesSchool recordsSocial Security Administration recordsSocial service agency recordsSupport payment recordsUtility billsVeterans Administration (VA) records		<ul style="list-style-type: none">An owner may seek verification only if the owner has clear written policy.
<ul style="list-style-type: none">Family type. (Information verified only to determine eligibility for project, preferences, and allowances.)	<ul style="list-style-type: none">Disability Status: statement from physician or other reliable source, if benefits documenting status are not received. See paragraph 3.25 B.1 for restrictions on this form of verification.Displacement Status: Written statement or certificate of displacement by the appropriate governmental authority.	<ul style="list-style-type: none">Telephone or in-person contact with source documented in file by the owner.	<ul style="list-style-type: none">Elderly Status (when there is reasonable doubt that applicant is at least 62): birth certificate, baptismal certificate, social security records, driver's license, census record, official record of birth or other authoritative document or receipt of SSI old age benefits or SS benefits.Disabled, blind: evidence of receipt of SSI or Disability benefits.	<ul style="list-style-type: none">Elderly Status: Applicant's signature on application is generally sufficient.	<ul style="list-style-type: none">Unless the applicant receives income or benefits for which elderly or disabled status is a requirement, such status must be verified.Status of disabled family members must be verified for entitlement to \$480 dependent deduction and disability assistance allowance.Owner may not ask the nature/extent of disability.

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Full-time student status (of family member 18 or older, excluding head, spouse, or foster children).	<ul style="list-style-type: none">Verification from the Admissions or Registrar's Office or dean, counselor, advisor, etc., or from VA Office.	<ul style="list-style-type: none">Telephone or in-person contact with these sources documented in file by the owner.	<ul style="list-style-type: none">School records, such as paid fee statements that show a sufficient number of credits to be considered a full-time student by the educational institution attended.		
<ul style="list-style-type: none">Immigration Status.	<ul style="list-style-type: none">Verification of eligible immigration status must be received from DHS through the DHS SAVE system or through secondary verification using DHS Form G-845.	<ul style="list-style-type: none">None.	<ul style="list-style-type: none">Applicant/resident must provide appropriate immigration documents to initiate verification.	<ul style="list-style-type: none">Noncitizens must sign declaration certifying the following: Eligible immigration status; or Decision not to claim eligible status.	<ul style="list-style-type: none">Owners must require noncitizens requesting assistance to provide verification of eligible immigration status.

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

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Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Income maintenance payments, benefits, income other than wages (i.e., welfare, Social Security [SSI], Supplemental Security Income [SSI], Disability Income, Pensions).	<ul style="list-style-type: none">Award or benefit notification letters prepared and signed by authorizing agency.TRACS or REAC may provide verification for social security.	<ul style="list-style-type: none">Telephone or in-person contact with income source, documented in file by the owner.NOTE: For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.	<ul style="list-style-type: none">Current or recent check stubs with date, amount, and check number recorded by the owner.Award letters or computer printout from court or public agency.Copies of validated bank deposit slips, with identification by bank.Most recent quarterly pension account statement.		<ul style="list-style-type: none">Checks or automatic bank deposit slips may not provide gross amounts of benefits if applicant has deductions made for Medicare Insurance.Pay stubs for the most recent four to six weeks should be obtained.Copying of U.S. Treasury checks is not permitted.Award letters/printouts from court or public agency may be out of date; telephone verification of letter/printout is recommended.
<ul style="list-style-type: none">Interest from sale of real property (e.g., contract for deed, installment sales contract, etc.)	<ul style="list-style-type: none">Verification form completed by an accountant, attorney, real estate broker, the buyer, or a financial institution which has copies of the amortization schedule from which interest income for the next 12 months can be obtained.	<ul style="list-style-type: none">Telephone or in-person contact with appropriate party, documented in file by the owner.	<ul style="list-style-type: none">Copy of the contract.Copy of the amortization schedule, with sufficient information for the owner to determine the amount of interest to be earned during the next 12 months.NOTE: Copy of a check paid by the buyer to the applicant is not acceptable.		<ul style="list-style-type: none">Only the interest income is counted; the balance of the payment applied to the principal is merely a liquidation of the asset.The owner must get enough information to compute the actual interest income for the next 12 months.

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^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Medical expenses.	<ul style="list-style-type: none">Verification by a doctor, hospital or clinic, dentist, pharmacist, etc., of estimated medical costs to be incurred or regular payments expected to be made on outstanding bills which are not covered by insurance.	<ul style="list-style-type: none">Telephone or in-person contact with these sources, documented in file by the owner.	<ul style="list-style-type: none">Copies of cancelled checks that verify payments on outstanding medical bills that will continue for all or part of the next 12 months.Copies of income tax forms (Schedule A, IRS Form 1040) that itemize medical expenses, when the expenses are not expected to change over the next 12 months.Receipts, cancelled checks, pay stubs, which indicate health insurance premium costs, or payments to a resident attendant.Receipts or ticket stubs that verify transportation expenses directly related to medical expenses.	<ul style="list-style-type: none">Notarized statement or signed affidavit of transportation expenses directly related to medical treatment, if there is no other source of verification.	<ul style="list-style-type: none">Medical expenses are not allowable as deduction unless applicant is an elderly or disabled family. Status must be verified.
<ul style="list-style-type: none">Need for an assistive animal.	<ul style="list-style-type: none">Letter from medical provider.				<ul style="list-style-type: none">If the owner's policy is to verify this need, owner must implement policy consistently.

^a**NOTE:** Requests for verification from third parties must be accompanied by a Consent to Release form.

^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

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Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Net Income for a business.	<ul style="list-style-type: none">Not applicable.	<ul style="list-style-type: none">Not applicable.	<ul style="list-style-type: none">Form 1040 with Schedule C, E, or F.Financial Statement(s) of the business (audited or unaudited) including an accountant's calculation of straight-line depreciation expense if accelerated depreciation was used on the tax return or financial statement.Any loan application listing income derived from business during the preceding 12 months.For rental property, copies of recent rent checks, lease and receipts for expenses, or IRS Schedule E.		
<ul style="list-style-type: none">Recurring contributions and gifts.	<ul style="list-style-type: none">Notarized statement or affidavit signed by the person providing the assistance giving the purpose, dates, and value of gifts.	<ul style="list-style-type: none">Telephone or in-person contact with source documented in file by the owner.	<ul style="list-style-type: none">Not applicable.	<ul style="list-style-type: none">Notarized statement or affidavit signed by applicant stating purpose, dates, and value of gifts.	<ul style="list-style-type: none">Sporadic contributions and gifts are not counted as income.

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^b**NOTE:** If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.

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Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Self-employment, tips, gratuities, etc.	None available.	None available.	<ul style="list-style-type: none">Form 1040/1040A showing amount earned and employment period.	<ul style="list-style-type: none">Notarized statement or affidavit signed by applicant showing amount earned and pay period.	
<ul style="list-style-type: none">Social security number.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">Original Social Security cardDriver's license with SSNIdentification card issued by a federal, State, or local agency, a medical insurance provider, or an employer or trade union.Earnings statements on payroll stubsBank statementForm 1099Benefit award letterRetirement benefit letterLife insurance policyCourt records	<ul style="list-style-type: none">Certification that document is complete/accurate unless original Social Security card is provided.	<ul style="list-style-type: none">Individuals who have applied for legalization under the Immigration Reform and Control Act of 1986 will be able to disclose their social security numbers but unable to supply cards for documentation. Social security numbers are assigned to these persons when they apply for amnesty. The cards go to DHS until the persons are granted temporary lawful resident status. Until that time, their acceptable documentation is a letter from the DHS indicating that social security numbers have been assigned.
<ul style="list-style-type: none">Unborn children.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">None required.	<ul style="list-style-type: none">Applicant/tenant self-certifies to pregnancy.	<ul style="list-style-type: none">Owner may not verify further than self-certification.

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Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Unemployment compensation.	<ul style="list-style-type: none">Verification form completed by source.	<ul style="list-style-type: none">Telephone or in-person contact with agency documented in a file by an owner.	<ul style="list-style-type: none">Copies of checks or records from agency provided by applicant stating payment amounts and dates.Benefit notification letter signed by authorizing agency.		<ul style="list-style-type: none">Frequency of payments and expected length of benefit term must be verified.Income not expected to last full 12 months must be calculated based on 12 months and interim recertification completed when benefits stop.
<ul style="list-style-type: none">Welfare payments (as-paid states only).	<ul style="list-style-type: none">Verification form completed by welfare department indicating maximum amount family may receive.Maximum shelter schedule by household size with ratable reduction schedule.	<ul style="list-style-type: none">Telephone or in-person contact with income source, documented in file by the owner.	<ul style="list-style-type: none">Maximum shelter allowance schedule with ratable reduction schedule provided by applicant.	<ul style="list-style-type: none">Not appropriate.	<ul style="list-style-type: none">Actual welfare benefit amount not sufficient as proof of income in "as-paid" states or localities since income is defined as maximum shelter amount.

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Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party ^a		Documents Provided by Applicant	Self-Declaration	
	Written ^b	Oral ^c			
<ul style="list-style-type: none">Zero Income.	<ul style="list-style-type: none">Not applicable.	<ul style="list-style-type: none">Not applicable.	<ul style="list-style-type: none">Not applicable.	<ul style="list-style-type: none">Applicant/Tenant self-certifies to zero income.	<ul style="list-style-type: none">Owners may require applicant/tenant to sign verification release of information forms for state, local, and federal benefits programs, as well as the HUD 9887 and HUD 9887-A.Owners may require the tenant to reverify zero income status at least every 90 days.

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^c**NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.

NJHMFA AUDIT CHECKLIST

The following items should be available when the Agency audits your project:

- * A copy of your original application and any allocation documents showing the percentage of credits and the number of units that were allocated credits.
- * A copy of the original Form 8609, with Parts I and II complete.
- * Utility allowance data
- * The minimum set-aside and the date initial compliance was achieved.
- * The date all buildings were placed in service.
- * The date the credits were allocated. If the project received credits from more than one allocation year, all dates should be available.
- * The year in which the credits were first claimed.
- * The number of buildings in the project.
- * If credits were allocated based on the provision of a social service component, documentation showing that all social services are in place.
- * A tenant file for every tenant that has resided in each unit for the entire project. Each file should include:
 1. A tenant Move-In Certification of Income
 2. Annual Recertification of Income
 3. Back-up documentation to support the certification/recertification including written 3rd party verifications.
 4. An initial lease for a minimum of six (6) months
 5. Rent card/roll/list showing tenant rental payment history

Internal Revenue Code § 42 Low-income housing credit.**(a) In general.**

For purposes of section 38 , the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

- (1) the applicable percentage of
- (2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings.

For purposes of this section —

(1) Building placed in service during 1987.

In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term “applicable percentage” means—

- (A) 9 percent for new buildings which are not federally subsidized for the taxable year, or
- (B) 4 percent for—
 - (i) new buildings which are federally subsidized for the taxable year, and
 - (ii) existing buildings.

(2) Buildings placed in service after 1987.

(A) In general. In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term “applicable percentage” means the appropriate percentage prescribed by the Secretary for the earlier of—

- (i) the month in which such building is placed in service, or
- (ii) at the election of the taxpayer—
 - (I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) Method of prescribing percentages. The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a building described in paragraph (1)(A) , and

(ii) 30 percent of the qualified basis of a building described in paragraph (1)(B) .

(C) Method of discounting. The present value under subparagraph (B) shall be determined—

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B) ,

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(3) Cross references.

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e) .

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3) .

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account

under this section with respect to any building, see subsection (h)(7) .

(c) Qualified basis; qualified low-income building.

For purposes of this section —

(1) Qualified basis.

(A) Determination. The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction. For purposes of subparagraph (A) , the term “applicable fraction” means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction. For purposes of subparagraph (B) , the term “unit fraction” means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction. For purposes of subparagraph (B) , the term “floor space fraction” means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless. In the case of a qualified low-income building described in subsection (i)(3)(B)(iii) , the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building.

The term “qualified low-income building” means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).

(d) Eligible basis.

For purposes of this section —

(1) New buildings.

The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings.

(A) In general. The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B) , its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements. A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the later of—

(I) the date the building was last placed in service,
or

(II) the date of the most recent nonqualified
substantial improvement of the building,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5) , a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis. For purposes of subparagraph (A) , the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B) .

(i) Nonqualified substantial improvement. For purposes of subparagraph (B)(ii) —

(I) In general. The term “nonqualified substantial improvement” means any substantial improvement if section 167(k) (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990 [11/5/90]) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.

(II) Date of substantial improvement. The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III) .

(III) Substantial improvement. The term “substantial improvement” means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.

(ii) Special rules for certain transfers. For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is

placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(iii) Related person, etc.

(I) Application of section 179 . For purposes of subparagraph (B)(i) , section 179(d) shall be applied by substituting “10 percent” for “50 percent” in section 267(b) and 707(b) and in section 179(d)(7) .

(II) Related person. For purposes of subparagraph (B)(iii) , a person (hereinafter in this subclause referred to as the “related person”) is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1) , or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1) , “10 percent” shall be substituted for “50 percent”.

(3) Eligible basis reduced where disproportionate standards for units.

(A) In general. Except as provided in subparagraph (B) , the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs.

(i) In general. Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II) , and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess. The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis.

For purposes of this subsection —

(A) In general. Except as provided in subparagraphs (B) and (C) , the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included. The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain nontenants.

(i) In general. The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation. The increase in the adjusted basis of any building which is taken into account by reason of clause (i)

shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility. For purposes of this subparagraph , the term “community service facility” means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation. The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a) .

(5) Special rules for determining eligible basis.

(A) Eligible basis reduced by federal grants. If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.

(B) Eligible basis not to include expenditures where section 167(k) elected. The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990 [11/5/90]).

(C) Increase in credit for buildings in high cost areas.

(i) In general. In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph —

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph ,
and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under

subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph .

(ii) Qualified census tract.

(I) In general. The term “qualified census tract” means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated. The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas. For purposes of this clause , each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas.

(I) In general. The term “difficult development areas” means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated. The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas.

A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions. For purposes of this subparagraph —

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4) ,

(III) the term “metropolitan statistical area” has the same meaning as when used in section 143(k)(2)(B) , and

(IV) the term “nonmetropolitan area” means any county (or portion thereof) which is not within a metropolitan statistical area.

(6) Credit allowable for certain federally-assisted buildings acquired during 10-year period described in paragraph (2)(B)(ii) .

(A) In general. On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary—

(i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration, or

(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

The preceding sentence shall not apply to any building described in paragraph (7)(B) .

(B) Federally-assisted building. For purposes of subparagraph (A) , the term “federally-assisted building” means any building which is substantially assisted, financed, or operated under—

(i) section 8 of the United States Housing Act of 1937,

(ii) section 221(d)(3) or 236 of the National Housing Act,
or

(iii) section 515 of the Housing Act of 1949,

as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

(C) Low-income buildings where mortgage may be prepaid. A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if—

(i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,

(ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

(iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

(D) Buildings acquired from insured depository institutions in default. A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(E) Appropriate federal official. For purposes of subparagraph (A), the term “appropriate Federal official” means—

(i) the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and

(ii) the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.

(7) Acquisition of building before end of prior compliance period.

(A) In general. Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building. A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building.

(1) In general.

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures.

For purposes of paragraph (1) —

(A) In general. The term “rehabilitation expenditures” means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc, not included. Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d) .

(3) Minimum expenditures to qualify.

(A) In general. Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 10 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is \$3,000 or more.

(B) Exception from 10 percent rehabilitation. In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii) .

(C) Date of determination. The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(4) Special rules.

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection —

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A) , and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection .

(5) No double counting.

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building.

The Secretary may prescribe regulations, consistent with the purposes of this subsection , treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period.

(1) Credit period defined.

For purposes of this section , the term “credit period” means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B) , once made, shall be irrevocable.

(2) Special rule for 1st year of credit period.

(A) In general. The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year. Any reduction by reason of subparagraph (A) in the credit allowable (without

regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period.

(A) In general. In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to $\frac{2}{3}$ of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies. A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property.

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a) , such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j) .

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed.

(A) In general. The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit.

(i) In general. In the case of a building described in clause

(ii) —

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II) .

(ii) Building described. A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if subsection (e)(3)(A)(ii)(II) were applied by substituting “\$2,000” for “\$3,000”.

(g) Qualified low-income housing project.

For purposes of this section —

(1) In general.

The term “qualified low-income housing project” means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20-50 test. The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 test. The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph , once made, shall be irrevocable. For purposes of this paragraph , any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units.

(A) In general. For purposes of paragraph (1) , a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent. For purposes of subparagraph (A) , gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii) , the term “supportive service” means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii) , such term includes

any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit. For purposes of this paragraph , the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7) , the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii) .

(D) Treatment of units occupied by individuals whose incomes rise above limit.

(i) In general. Except as provided in clause (ii) , notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1) , such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit. If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1) , clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B) , the preceding sentence shall be applied by substituting “170 percent” for “140 percent” and by substituting “any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income” for “any residential unit in the building (of a size

comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation”.

(E) Units where federal rental assistance is reduced as tenant's income increases. If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1) , such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1) , and

(II) such units were rent-restricted within the meaning of subparagraph (A) .

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements.

(A) In general. Except as otherwise provided in this paragraph , a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification.

(i) In general. In determining whether a building (hereinafter in this subparagraph referred to as the “prior building”) is a qualified low-income building, the taxpayer

may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings. In the case of a building which the taxpayer elects to take into account under clause (i) , the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service. For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule. A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified. For purposes of this section , a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable.

Paragraphs (2) (other than subparagraph (A) thereof), (3) , (4) , (5) , (6) , and (7) of section 142(d) , and section 6652(j) , shall apply for purposes of determining whether any project is a qualified low-income housing project

and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term “gross rent” shall have the meaning given such term by paragraph (2)(B) of this subsection

(5) Election to treat building after compliance period as not part of a project.

For purposes of this section , the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution.

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects.

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications.

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1) , or

(B) any annual recertification of tenant income for purposes of this subsection , if the entire building is occupied by low-income tenants.

(h) Limitation on aggregate credit allowable with respect to projects located in a state.

(1) Credit may not exceed credit amount allocated to building.

(A) In general. The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection .

(B) Time for making allocation. Except in the case of an allocation which meets the requirements of subparagraph (C) , (D) , (E) , or (F) an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment. An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii) .

(ii) Limitation. The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation. Notwithstanding clause (i) , the full amount of the allocation shall be taken into account under paragraph (2) .

(E) Exception where 10 percent of cost incurred.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building. For purposes of clause (i) , the term “qualified building” means any building which is part of a project if the taxpayer's basis in such project (as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis.

(i) In general. In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period. For purposes of clause (i) , the term “project period” means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year.

Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies.

(A) In general. The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to state housing credit agencies. Except as provided in subparagraphs (D) and (E) , the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling. The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) \$1.75 (\$1.50 for 2001) multiplied by the State population, or

(II) \$2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i) , the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii) , the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain states.

(i) In general. The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover. For purposes of this subparagraph , the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified states. The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused

housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j) .

(iv) Qualified State. For purposes of this subparagraph , the term “qualified State” means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii) .

(E) Special rule for states with constitutional home rule cities. For purposes of this subsection —

(i) In general. The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations. In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city. For purposes of this paragraph , the term “constitutional home rule city” has the meaning given such term by section 146(d)(3)(C) .

(F) State may provide for different allocation. Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph .

(G) Population. For purposes of this paragraph , population shall be determined in accordance with section 146(j) .

(H) Cost-of-living adjustment.

(i) In general. In the case of a calendar year after 2002, the \$2,000,000 and \$1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 2001” for “calendar year 1992” in subparagraph (B) thereof.

(ii) Rounding.

(I) In the case of the \$2,000,000 amount, any increase under clause (i) which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.

(II) In the case of the \$1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account.

(A) In general. Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if —

(i) such obligation is taken into account under section 146 ,
and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. For purposes of subparagraph (A) , if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A) , paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of state ceiling set-aside for certain projects involving qualified nonprofit organizations.

(A) In general. Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B) .

(B) Projects involving qualified nonprofit organizations. For purposes of subparagraph (A) , a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization. For purposes of this paragraph , the term “qualified nonprofit organization” means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a) ,

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries.

(i) In general. For purposes of this paragraph , a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation. For purposes of clause (i) , the term “qualified corporation” means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside. Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph .

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing.

(A) In general. No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment. For purposes of this paragraph , the term “extended low-income housing commitment” means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii) ,

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i) ,

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment.

(i) In general. The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds. If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period. For purposes of this paragraph , the term “extended use period” means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status.

(i) In general. The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure)

unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted. The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section

.

(F) Qualified contract. For purposes of subparagraph (E) , the term “qualified contract” means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II) , reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph , including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity.

(i) In general. For purposes of subparagraph (E) , the term “adjusted investor equity” means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for “calendar year 1987”.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account. Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i) .

(iii) Base calendar year. For purposes of this subparagraph , the term “base calendar year” means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion. For purposes of this paragraph , the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer. The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance. If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building. The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules.

(A) Building must be located within jurisdiction of credit agency. A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit. If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general. The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which

would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage. For purposes of clause (i) , the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii) .

(iii) Determination of credit amount. The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f) , and

(II) subsection (f)(3)(A) were applied without regard to “the percentage equal to $\frac{2}{3}$ of”.

(D) Housing credit agency to specify applicable percentage and maximum qualified basis. In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection .

(8) Other definitions.

For purposes of this subsection —

(A) Housing credit agency. The term “housing credit agency” means any agency authorized to carry out this subsection .

(B) Possessions treated as states. The term “State” includes a possession of the United States.

(i) Definitions and special rules.

For purposes of this section —

(1) Compliance period.

The term “compliance period” means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized.

(A) In general. Except as otherwise provided in this paragraph , for purposes of subsection (b)(1) , a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 , or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by balance of loan or proceeds of obligations. A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) —

(i) in the case of a loan, the principal amount of such loan, and

(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.

(C) Special rule for subsidized construction financing.

Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if—

(i) such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and

(ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service.

(D) Below market federal loan. For purposes of this paragraph , the term “below market Federal loan” means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal

loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).

(E) Buildings receiving home assistance or Native American Housing assistance.

(i) In general. Assistance provided under the HOME Investment Partnerships Act (as in effect on the date of the enactment of this subparagraph or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997) with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.

(ii) Special rule for certain high-cost housing areas. In the case of a building located in a city described in section 142(d)(6) , clause (i) shall be applied by substituting “25 percent” for “40 percent”.

(3) Low-income unit.

(A) In general. The term “low-income unit” means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions.

(i) In general. A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy. For purposes of clause (i) , the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless. For purposes of clause (i) , a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units. For purposes of clause (i) , a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units. In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit. A unit shall not fail to be treated as a low-income unit merely because it is occupied—

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act, or

(II) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

Caution: Subclause (i)(3)(D)(ii)(I), following, is effective for tax. yrs. begin. before 1/1/2005. For subclause (i)(3)(D)(ii)(I), effective for tax. yrs. begin. after 12/31/2004, see below.

(I) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

Caution: Subclause (i)(3)(D)(ii)(I), following, is effective for tax. yrs. begin. after 12/31/2004. For subclause (i)(3)(D)(ii)(I), effective for tax. yrs. begin. before 1/1/2005, see above.

(I) single parents and their children and such parents and children are not dependents (as defined in section 152 , determined without regard to subsections (b)(1) , (b)(2) , and (d)(1)(B) thereof) of another individual, or

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan.

(i) In general. Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit. In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied. In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building.

The term “new building” means a building the original use of which begins with the taxpayer.

(5) Existing building.

The term “existing building” means any building which is not a new building.

(6) Application to estates and trusts.

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property.

(A) In general. No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B) .

(B) Minimum purchase price. For purposes of subparagraph (A) , the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii) .

(j) Recapture of credit.

(1) In general.

If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year, then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount.

For purposes of paragraph (1) , the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A) , plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B) .

(3) Accelerated portion of credit.

For purposes of paragraph (2) , the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules.

(A) Tax benefit rule. The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason

of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account. Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3) . Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3) .

(D) No credits against tax. Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss. The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space. The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1) , and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer.

(A) In general. For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies. This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules.

(i) Husband and wife treated as 1 partner. For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable. Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building (or interest therein) where bond posted.

In the case of a disposition of a building or an interest therein the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if—

(A) the taxpayer furnishes to the Secretary a bond in an amount satisfactory to the Secretary and for the period required by the Secretary, and

(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(k) Application of at-risk rules.

For purposes of this section —

(1) In general.

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining

the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person.

For purposes of paragraph (1) —

(A) In general. If the requirements of subparagraphs (B) , (C) , and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II) .

(B) Financing secured by property. The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.

(C) Portion of building attributable to financing. The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest. The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing.

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay.

(A) In general. To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621 .

(B) Applicable portion. For purposes of subparagraph (A) , the term “applicable portion” means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable

years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D) .

(C) Certain rules to apply. Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection .

(l) Certifications and other reports to secretary.

(1) Certification with respect to 1st year of credit period.

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h) ,

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary.

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies.

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies.

(1) Plans for allocation of credit among projects.

(A) In general. Notwithstanding any other provision of this section , the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such

individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan. For purposes of this paragraph , the term “qualified allocation plan” means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C) Certain selection criteria must be used. The selection criteria set forth in a qualified allocation plan must include—

- (i) project location,
- (ii) housing needs characteristics,
- (iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,
- (iv) sponsor characteristics,
- (v) tenant populations with special housing needs,
- (vi) public housing waiting lists,
- (vii) tenant populations of individuals with children, and
- (viii) projects intended for eventual tenant ownership.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility.

(A) In general. The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation. In making the determination under subparagraph (A) , the housing credit agency shall consider—

- (i) the sources and uses of funds and the total financing planned for the project,
- (ii) any proceeds or receipts expected to be generated by reason of tax benefits,
- (iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made-when credit amount applied for and when building placed in service.

(i) In general. A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies. Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

- (3) preventing the avoidance of the rules of this section , and
- (4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

Notice 88-80
1988-30 I.R.B. 28

NOTICE 88-80

LOW-INCOME HOUSING TAX CREDIT -- DETERMINATION OF INCOME FOR
PURPOSES
OF SECTION 42(g)(1)

July 25, 1988

The purpose of this Notice is to inform taxpayers that regulations to be issued under section 42(g)(1) of the Internal Revenue Code of 1986 (the 'Code ') (relating to the determination of a qualified low-income housing project) will provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under section 8 of the United States Housing Act of 1937 (H.U.D. section 8).

For purposes of H.U.D. section 8, annual income is defined under 24 CFR 813.106 (1987). HUD section 8 median family income estimates (i.e., area median gross income estimates) are based on decennial Census data updated with bureau of the Census P-60 income data and Department of Commerce County Business Patterns employment and earnings data. The determination of annual income and median family income estimates are based on definitions of income that include some items of income that are not included in a taxpayer's gross income for purposes of computing Federal Income Tax liability. Thus, the income of individuals and area median gross income (adjusted for family size) for purposes of section 42(g)(1) of the Code will NOT be made by reference to items of income used in determining gross income for purposes of computing Federal Income Tax liability.

This document serves as an 'administrative pronouncement' as that term is described in section 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

The principal author of this Notice is Christopher J. Wilson of the Legislation and Regulations Division. For further information regarding this Notice contact Mr. Wilson on (202) 566-4336 (not a toll-free call).

Internal Revenue Service
Notice 88-80

Federal Regulations

Reg § 1.42-15. Available unit rule.

(a) Definitions. The following definitions apply to this section: *Applicable income limitation* means the limitation applicable under section 42(g)(1) or, for deep rent skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income. *Available unit rule* means the rule in section 42(g)(2)(D)(ii). *Comparable unit* means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in section 142(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available. *Current resident* means a person who is living in the low-income building. *Low-income unit* is defined by section 42(i)(3)(A). *Nonqualified resident* means a new occupant or occupants whose aggregate income exceeds the applicable income limitation. *Over-income unit* means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B). *Qualified resident* means an occupant either whose aggregate income (combined with the income of all other occupants of the unit) does not exceed the applicable income limitation and who is otherwise a low-income resident under section 42, or who is a current resident.

(b) General section 42(g)(2)(D)(i) rule. Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted—

- (1) The unit continues to be treated as a low-income unit; and
- (2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) Exception. A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. In other words, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building to continue treating the over-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on

which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance. The failure to maintain the over-income units as low-income units, however, may affect the decision of whether or not to rent a particular available unit at market rate at a later time. A unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

(d) Effect of current resident moving within building. When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

(e) Available unit rule applies separately to each building in a project. In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) Result of noncompliance with available unit rule. If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units.

(g) Relationship to tax-exempt bond provisions. Financing arrangements that purport to be exempt-facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). This section is not intended as an interpretation under section 142.

(h) Examples. The following examples illustrate this section:

Example (1). This example illustrates noncompliance with the available unit rule in a low-income building containing three over-income units. On January 1, 1998, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. By the close of 1998, the first year of the credit period, the project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) and were otherwise low-income residents under section 42. Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. To

avoid recapture of credit, the project owner must maintain five of the units as low-income units. On November 1, 1999, the certificates of annual income state that annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1999, Units 8 and 9 became vacant. On December 1, 1999, the project owner rented Units 8 and 9 to qualified residents who were not current residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1999, the project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident who was not a current resident, eight of the units would be low-income units. At that time, Units 1, 2, and 3, the over-income units, could be rented to market-rate tenants because the building would still contain five low-income units.

Example (2). This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite J's income exceeding the applicable income limitation, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit newly occupied by J becomes an over-income unit under the available unit rule. The unit vacated by J assumes the status the newly occupied unit had immediately before J occupied the unit. The over-income units in the building continue to be treated as low-income units.

(i) Effective date. This section applies to leases entered into or renewed on and after September 26, 1997.

Form **8609**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

► See separate instructions.

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions)

B Name and address of **housing credit agency**

C Name, address, and TIN of **building owner** receiving allocation

D Employer identification number of agency

E Building identification number (BIN)

TIN ►

1a Date of allocation ►

b Maximum housing credit dollar amount allowable

1b

2 Maximum applicable credit percentage allowable (see instructions)

2

%

3a Maximum qualified basis

3a

b If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions) . . .

3b

1 _ _ %

☐ Building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone

☐ Section 42(d)(5)(B) high cost area provisions

4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.) . . .

4

%

5 Date building placed in service ►

6 Check the boxes that describe the allocation for the building (check those that apply):

a ☐ Newly constructed and federally subsidized **b** ☐ Newly constructed and **not** federally subsidized **c** ☐ Existing building

d ☐ Sec. 42(e) rehabilitation expenditures federally subsidized **e** ☐ Sec. 42(e) rehabilitation expenditures **not** federally subsidized

f ☐ Not federally subsidized by reason of 40-50 rule under sec. 42(i)(2)(E) **g** ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(5)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

►
Signature of authorized official

►
Name (please type or print)

►
Date

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions)

7

8a Original qualified basis of the building at close of first year of credit period

8a

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?

☐ Yes ☐ No

9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?

☐ Yes ☐ No

b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(d)(3)(B)? . . .

☐ Yes ☐ No

10 Check the appropriate box for each election:

Caution: Once made, the following elections are irrevocable.

a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ►

☐ Yes ☐ No

b Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) ►

☐ Yes

c Elect minimum set-aside requirement (section 42(g)) (see instructions) ☐ 20-50 ☐ 40-60

☐ 25-60 (N.Y.C. only)

d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions)

☐ 15-40

Under penalties of perjury, I declare that the above building continues to qualify as a part of a qualified low-income housing project and meets the requirements of Internal Revenue Code section 42. I have examined this form and attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

►
Signature

►
Taxpayer identification number

►
Date

►
Name (please type or print)

►
Tax year

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63981U

Form **8609** (Rev. 12-2008)

Form

8823

(Rev. November 2009)

Department of the Treasury
Internal Revenue Service**Low-Income Housing Credit Agencies
Report of Noncompliance or Building Disposition****Note:** File a separate Form 8823 for each building that is disposed of or goes out of compliance.

OMB No. 1545-1204

Check here if this is an
amended return ☐

<p>1 Building name (if any). Check if item 1 differs from Form 8609 <input type="checkbox"/></p> <p>Street address</p> <p>City or town, state, and ZIP code</p> <p>2 Building identification number (BIN)</p> <p>3 Owner's name. Check if item 3 differs from Form 8609 <input type="checkbox"/></p> <p>Street address</p> <p>City or town, state, and ZIP code</p> <p>4 Owner's taxpayer identification number <input type="checkbox"/> EIN <input type="checkbox"/> SSN</p> <p>5 Total credit allocated to this BIN \$</p> <p>6 If this building is part of a multiple building project, enter the number of buildings in the project ▶</p> <p>7 a Total number of residential units in this building ▶</p> <p>b Total number of low-income units in this building ▶</p> <p>c Total number of residential units in this building determined to have noncompliance issues ▶</p> <p>d Total number of units reviewed by agency (see instructions) ▶</p> <p>8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY) ▶</p> <p>9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY) ▶</p> <p>10 Check this box if you are filing only to show correction of a previously reported noncompliance problem ▶ <input type="checkbox"/></p> <p>11 Check the box(es) that apply:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Out of compliance</th> <th style="text-align: center;">Noncompliance corrected</th> </tr> </thead> <tbody> <tr><td>a Household income above income limit upon initial occupancy</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>b Owner failed to correctly complete or document tenant's annual income recertification</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>c Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>e Changes in Eligible Basis or the Applicable Percentage (see instructions)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>f Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>g Gross rent(s) exceed tax credit limits</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>h Project not available to the general public (see instructions) (attach explanation)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>l Low-income units occupied by nonqualified full-time students</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>m Owner did not properly calculate utility allowance</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>n Owner has failed to respond to agency requests for monitoring reviews</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>o Low-income units used on a transient basis (attach explanation)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>p Building is no longer in compliance nor participating in the section 42 program (attach explanation)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>q Other noncompliance issues (attach explanation)</td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> </tbody> </table> <p>12 Additional information for any item above. Attach explanation and check box ▶ <input type="checkbox"/></p> <p>13 a Building disposition by <input type="checkbox"/> Sale <input type="checkbox"/> Foreclosure <input type="checkbox"/> Destruction <input type="checkbox"/> Other (attach explanation)</p> <p>b Date of disposition (MMDDYYYY)</p> <p>c New owner's name</p> <p>Street address</p> <p>City or town, state, and ZIP code</p> <p>d New owner's taxpayer identification number <input type="checkbox"/> EIN <input type="checkbox"/> SSN</p> <p>14 Name of contact person</p> <p>15 Telephone number of contact person () Ext.</p>		Out of compliance	Noncompliance corrected	a Household income above income limit upon initial occupancy	<input type="checkbox"/>	<input type="checkbox"/>	b Owner failed to correctly complete or document tenant's annual income recertification	<input type="checkbox"/>	<input type="checkbox"/>	c Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>	d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	<input type="checkbox"/>	<input type="checkbox"/>	e Changes in Eligible Basis or the Applicable Percentage (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>	f Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>	g Gross rent(s) exceed tax credit limits	<input type="checkbox"/>	<input type="checkbox"/>	h Project not available to the general public (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>	i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	<input type="checkbox"/>	<input type="checkbox"/>	j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	<input type="checkbox"/>	<input type="checkbox"/>	k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	<input type="checkbox"/>	<input type="checkbox"/>	l Low-income units occupied by nonqualified full-time students	<input type="checkbox"/>	<input type="checkbox"/>	m Owner did not properly calculate utility allowance	<input type="checkbox"/>	<input type="checkbox"/>	n Owner has failed to respond to agency requests for monitoring reviews	<input type="checkbox"/>	<input type="checkbox"/>	o Low-income units used on a transient basis (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>	p Building is no longer in compliance nor participating in the section 42 program (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>	q Other noncompliance issues (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>	<p>IRS Use Only</p>
	Out of compliance	Noncompliance corrected																																																					
a Household income above income limit upon initial occupancy	<input type="checkbox"/>	<input type="checkbox"/>																																																					
b Owner failed to correctly complete or document tenant's annual income recertification	<input type="checkbox"/>	<input type="checkbox"/>																																																					
c Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	<input type="checkbox"/>	<input type="checkbox"/>																																																					
e Changes in Eligible Basis or the Applicable Percentage (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
f Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
g Gross rent(s) exceed tax credit limits	<input type="checkbox"/>	<input type="checkbox"/>																																																					
h Project not available to the general public (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
l Low-income units occupied by nonqualified full-time students	<input type="checkbox"/>	<input type="checkbox"/>																																																					
m Owner did not properly calculate utility allowance	<input type="checkbox"/>	<input type="checkbox"/>																																																					
n Owner has failed to respond to agency requests for monitoring reviews	<input type="checkbox"/>	<input type="checkbox"/>																																																					
o Low-income units used on a transient basis (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
p Building is no longer in compliance nor participating in the section 42 program (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>																																																					
q Other noncompliance issues (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>																																																					

Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of authorizing official

Print name and title

Date (MMDDYYYY)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Housing credit agencies use Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions **or** any building disposition.

The housing credit agency should also give a copy of Form 8823 to the owner(s).

Who Must File

Any authorized housing credit agency that becomes aware that a low-income housing building was disposed of or is not in compliance with the provisions of section 42 must file Form 8823.

When To File

File Form 8823 no later than 45 days after **(a)** the building was disposed of or **(b)** the end of the time allowed the building owner to correct the condition(s) that caused noncompliance. For details, see Regulations section 1.42-5(e).

Where To File

File Form 8823 with the:
Internal Revenue Service
P.O. Box 331
Attn: LIHC Unit, DP 607 South
Philadelphia Campus
Bensalem, PA 19020

Specific Instructions

Amended return. If you are filing an amended return to correct previously reported information, check the box at the top of page 1.

Item 2. Enter the building identification number (BIN) assigned to the building by the housing credit agency as shown on Form 8609.

Items 3, 4, 13b, and 13d. If there is more than one owner (other than as a member of a pass-through entity), attach a schedule listing the owners, their addresses, and their taxpayer identification numbers. Indicate whether each owner's taxpayer identification number is an employer identification number (EIN) or a social security number (SSN).

Both the EIN and the SSN have nine digits. An EIN has two digits, a hyphen, and seven digits. An SSN has three digits, a hyphen, two digits, a hyphen, and four digits, and is issued only to individuals.

Item 7d. "Reviewed by agency" includes physical inspection of the property, tenant file inspection, or review of documentation submitted by the owner.

Item 8. Enter the date that the building ceased to comply with the low-income housing credit provisions. If there are multiple noncompliance issues, enter the

date for the earliest discovered issue. **Do not** complete item 8 for a building disposition. Instead, skip items 9 through 12, and complete item 13.

Item 9. Enter the date that the noncompliance issue was corrected. If there are multiple issues, enter the date the last correction was made.

Item 10. Do not check this box unless the sole reason for filing the form is to indicate that previously reported noncompliance problems have been corrected.

Item 11c. Housing credit agencies must use either **(a)** the local health, safety, and building codes (or other habitability standards) or **(b)** the Uniform Physical Conditions Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. Attach a statement describing either **(a)** the deficiency and its severity under the UPCS, i.e., minor (level 1), major (level 2), and severe (level 3) or **(b)** the health, safety, or building violation under the local codes. The Department of Housing and Urban Development's Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled "Dictionary of Deficiency Definitions" found at www.hud.gov/reac under Library, Physical Inspection, Training Materials. Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection. In using the UPCS inspection standards, report all deficiencies in the five major inspectable areas (defined below) of the project: (1) Site; (2) Building exterior; (3) Building systems; (4) Dwelling units; and (5) Common areas.

1. Site. The site components, such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the project or areas of the project), parking lots/driveways, play areas and equipment, refuse disposal equipment, roads, storm drainage, and walkways, must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walkways or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of garbage and debris, vermin or rodent infestation, or fire hazards.

2. Building exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

3. Building systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

4. Dwelling units. Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceilings, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair. Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (single room occupancy units need not contain water facilities). If the dwelling unit includes its own bathroom, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

5. Common areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement, garage/carport, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

Health and Safety Hazards. All areas and components of the housing must be free of health and safety hazards. These include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are not damaged, loose, missing portions, or otherwise unusable. The housing must have no evidence of infestation by rats, mice, or other vermin. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold as well as odor (e.g., propane, natural, sewer, or methane gas). The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 C.F.R. part 35).

Project owners must promptly correct exigent and fire safety hazards. Before leaving the project, the inspector should provide the project owner with a list of all observed exigent and fire safety hazards. Exigent health and safety hazards include: air quality problems such as propane, natural gas, or methane gas detected; electrical hazards such as exposed wires or

open panels and water leaks on or near electrical equipment; emergency equipment, fire exits, and fire escapes that are blocked or not usable; and carbon monoxide hazards such as gas or hot water heaters with missing or misaligned chimneys. Fire safety hazards include missing or inoperative smoke detectors (including missing batteries), expired fire extinguishers, and window security bars preventing egress from a unit.

Item 11d. Report the failure to provide annual certifications or the provision of certifications that are known to be incomplete or inaccurate as required by Regulations section 1.42-5(c). As examples, report a failure by the owner to include a statement summarizing violations (or copies of the violation reports) of local health, safety, or building codes; report an owner who provided inaccurate or incomplete statements concerning corrections of these violations.

Item 11e. For buildings placed in service before July 31, 2008, report any federal grant made with respect to any building or the operation thereof during any tax year in the compliance period. For buildings placed in service after July 30, 2008, report any federal grant used to finance any eligible basis costs of any building. Report changes in common areas which become commercial, when fees are charged for facilities, etc. In addition, for buildings placed in service before July 31, 2008, report any below market federal loan or any obligation the interest on which is exempt from tax under section 103 that is or was used (directly or indirectly) with respect to the building or its operation during the compliance period and that was not taken into account when determining eligible basis at the close of the first year of the credit period. For buildings placed in service after July 30, 2008, report any obligation the interest on which is exempt from tax under section 103 that is or was used (directly or indirectly) with respect to the building or its operation during the compliance period and that was not taken into account when determining eligible basis at the close of the first year of the credit period.

Item 11f. Failure to satisfy the minimum set-aside requirement for the first year of the credit period results in the permanent loss of the entire credit.

Failure to maintain the minimum set-aside requirement for any year after the first year of the credit period results in recapture of previously claimed credit and no allowable credit for that tax year. No low-income housing credit is allowable until the minimum set-aside is restored for a subsequent tax year.

Item 11h. All units in the building must be for use by the general public (as defined in Regulations section 1.42-9 and further clarified in section 42(g)(9)), including the requirement that no finding of discrimination under the Fair Housing Act occurred for the building. Low-income housing credit properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Act prohibits

discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C. sections 3601 through 3619.

It also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of low-income housing credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the low-income housing tax credit on a per-unit basis.

Individuals with questions about the accessibility requirements can obtain the Fair Housing Act Design Manual from HUD by calling 1-800-245-2691 and requesting item number HUD 11112, or they can order the manual through www.huduser.org under Publications.

Item 11i. The owner must rent to low-income tenants all comparable units that are available or that subsequently become available in the same building in order to continue treating the over-income unit(s) as a low-income unit. All units affected by a violation of the available unit rule may not be included in qualified basis. When the percentage of low-income units in a building again equals the percentage of low-income units on which the credit is based, the full availability of the credit is restored. Thus, only check the "Noncompliance corrected" box when the percentage of low-income units in the building equals the percentage on which the credit is based.

Item 11q. Check this box for noncompliance events other than those listed in 11a through 11p. Attach an explanation. For projects with allocations from the nonprofit set-aside under section 42(h)(5), report the lack of material participation by a non-profit organization (i.e., regular, continuous, and substantial involvement) that the housing credit agency learns of during the compliance period.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	11 hr., 43 min.
Learning about the law or the form	3 hr., 16 min.
Preparing and sending the form to the IRS	3 hr., 36 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form 8823 to this address. Instead, see *Where To File* on page 2.



Form **8611**
(Rev. January 2009)
Department of the Treasury
Internal Revenue Service

Recapture of Low-Income Housing Credit

► Attach to your return.

Note: Complete a separate Form 8611 for each building to which recapture applies.

OMB No. 1545-1035

Attachment
Sequence No. **90**

A Name(s) shown on return		B Identifying number
C Address of building (as shown on Form 8609)	D Building identification number (BIN)	E Date placed in service (from Form 8609)
F If building is financed in whole or part with tax-exempt bonds, see instructions and furnish:		(2) Date of issue
(1) Issuer's name		
(3) Name of issue		(4) CUSIP number

Note: Skip lines 1–7 and go to line 8 if recapture is passed through from a flow-through entity (partnership, S corporation, estate, or trust).

1 Enter total credits reported on Form 8586 in prior years for this building	1		
2 Credits included on line 1 attributable to additions to qualified basis (see instructions). . .	2		
3 Credits subject to recapture. Subtract line 2 from line 1	3		
4 Credit recapture percentage (see instructions)	4		
5 Accelerated portion of credit. Multiply line 3 by line 4	5		
6 Percentage decrease in qualified basis. Express as a decimal amount carried out to at least 3 places (see instructions)	6		
7 Amount of accelerated portion recaptured (see instructions if prior recapture on building). Multiply line 5 by line 6. Section 42(j)(5) partnerships, go to line 16. All other flow-through entities (except electing large partnerships), enter the result here and enter each recipient's share in the appropriate box of Schedule K-1. Generally, flow-through entities other than electing large partnerships will stop here. (Note: An estate or trust enters on line 8 only its share of recapture amount attributable to the credit amount reported on its Form 8586.)	7		
8 Enter recapture amount from flow-through entity (see Note above)	8		
9 Enter the unused portion of the accelerated amount from line 7 (see instructions)	9		
10 Net recapture. Subtract line 9 from line 7 or line 8. If less than zero, enter -0-	10		
11 Enter interest on the line 10 recapture amount (see instructions)	11		
12 Total amount subject to recapture. Add lines 10 and 11	12		
13 Unused credits attributable to this building reduced by the accelerated portion included on line 9 (see instructions)	13		
14 Recapture tax. Subtract line 13 from line 12. If zero or less, enter -0-. Enter the result here and on the appropriate line of your tax return (see instructions). If more than one Form 8611 is filed, add the line 14 amounts from all forms and enter the total on the appropriate line of your return. Electing large partnerships, see instructions	14		
15 Carryforward of the low-income housing credit attributable to this building. Subtract line 12 from line 13. If zero or less, enter -0- (see instructions)	15		

Only Section 42(j)(5) partnerships need to complete lines 16 and 17.

16 Enter interest on the line 7 recapture amount (see instructions)	16		
17 Total recapture. Add lines 7 and 16 (see instructions)	17		

General Instructions

Section references are to the Internal Revenue Code.

Purpose of Form

Use this form if you must recapture part of the low-income housing credit you claimed in previous years because the qualified basis decreased from one year to the next or you disposed of a building, or your interest therein, and you did not follow the procedures that would have prevented recapture of the credit.

Decrease in qualified basis. The decrease may result from a change in the eligible basis, or the building no longer meets the minimum set aside requirements of section 42(g)(1), the gross rent requirements of section 42(g)(2), or the other requirements for the units which are set aside.

Building dispositions. The disposition of a building, or an interest therein, will generate the recapture of the credit. You can prevent the recapture if you follow the procedures below, relative to the date of the disposition of the building or the interest therein.

Building dispositions before July 31, 2008. Disposing of a building or an interest therein during the tax year will generate a credit recapture, unless you timely post a satisfactory bond or pledge eligible U.S. Treasury securities as collateral. For details on the rules for posting or pledging, see Rev. Rul. 90-60, 1990-2 C.B. 3, and Rev. Proc. 99-11, 1999-1 C.B. 275.

Note. You may discontinue maintaining a bond or pledging eligible U.S. Treasury securities by making the election described in Rev. Proc. 2008-60, 2008-43 I.R.B. 1006, and if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period. See Rev. Proc. 2008-60 for the details on making the election.

Building dispositions after July 30, 2008. Disposing of a building or an interest therein will generate a credit recapture, unless it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period.

See section 42(j) for more information.

Note. If the decrease in qualified basis is because of a change in the amount for which you are financially at risk on the building, then you must first recalculate the amount of credit taken in prior years under section 42(k) before you calculate the recapture amount on this form.

To complete this form you will need copies of the following forms that you have filed:

- Form 8586, Low-Income Housing Credit (and Form 3800, General Business Credit, if applicable);
- Form 8609, Low-Income Housing Credit Allocation and Certification (or predecessor, Form 8609, Low-Income Housing Credit Allocation Certification);
- Form 8609-A, Annual Statement for Low-Income Housing Credit (or predecessor, Schedule A (Form 8609), Annual Statement); and
- Form 8611.

Note. Flow-through entities must give partners, shareholders, and beneficiaries the information that is reported in items C, D, E, and F of Form 8611.

Recapture does not apply if:

- You disposed of the building or an ownership interest in it and you satisfy the requirements for avoiding recapture as outlined earlier under *Building dispositions*;
- You disposed of not more than 33⅓% in the aggregate of your ownership interest in a building that you held through a partnership, or you disposed of an ownership interest in a building that you held through a partnership to which section 42(j)(5) applies or through an electing large partnership;

- The decrease in qualified basis does not exceed the additions to qualified basis for which credits were allowable in years after the year the building was placed in service;
- You correct a noncompliance event within a reasonable period after it is discovered or should have been discovered;
- The qualified basis is reduced because of a casualty loss, provided the property is restored or replaced within a reasonable period.

Recordkeeping

In order to verify changes in qualified basis from year to year, keep a copy of all Forms 8586, 8609, 8609-A (or predecessor, Schedule A (Form 8609)), 8611, and 8693 for 3 years after the 15-year compliance period ends.

Specific Instructions

Note. If recapture is passed through from a flow-through entity (partnership, S corporation, estate, or trust), skip lines 1-7 and go to line 8.

Item F. If the building is financed with tax-exempt bonds, furnish the following information: (1) name of the entity that issued the bond (not the name of the entity receiving the benefit of the financing); (2) date of issue, generally the first date there is a physical exchange of the bonds for the purchase price; (3) name of the issue, or if not named, other identification of the issue; and (4) CUSIP number of the bond with the latest maturity date. If the issue does not have a CUSIP number, enter "None."

Line 1. Enter the total credits claimed on the building for all prior years from all Forms 8586 (before reduction due to the tax liability limit) you have filed. Prior to the December 2006 revision of Form 8586, the credits (before reduction due to the tax liability limit) were reported in Part I. Do not include credits taken by a previous owner.

Line 2 Worksheet (*Line reference is to Form 8609-A (or predecessor, Schedule A (Form 8609).)

- | | | | |
|---|--|---|--|
| a | Enter the amount from line 10* | a | |
| b | Multiply a by 2 | b | |
| c | Enter the amount from line 11* | c | |
| d | Subtract c from b | d | |
| e | Enter decimal amount figured in step 1 of the instructions for line 14*. If line 14* does not apply to you, enter -0- | e | |
| f | Multiply d by e | f | |
| g | Subtract f from d | g | |
| h | Divide line 16* by line 15*. Enter the result here | h | |
| i | Multiply g by h. Enter this amount on line 2. (If more than one worksheet is completed, add the amounts on i from all worksheets and enter the total on line 2.) | i | |

Line 2. Determine the amount to enter on this line by completing a separate Line 2 Worksheet (on page 2) for each prior year for which line 7 of Form 8609-A (or predecessor, Schedule A (Form 8609)) was completed.

Line 4. Enter the credit recapture percentage, expressed as a decimal carried to at least 3 places, from the table below:

IF the recapture event occurs in . . .	THEN enter on line 4 . . .
Years 2 through 11333
Year 12267
Year 13200
Year 14133
Year 15067

Line 6. Enter the percentage decrease in qualified basis during the current year.

For this purpose, figure qualified basis without regard to any additions to qualified basis after the first year of the credit period. Compare any decrease in qualified basis first to additions to qualified basis. Recapture applies only if the decrease in qualified basis exceeds additions to qualified basis after the first year of the credit period.

If you disposed of the building or an ownership interest in it and did not satisfy the requirements for avoiding recapture as outlined earlier under *Building dispositions*, you must recapture all of the accelerated portion shown on line 5. Enter 1.000 on line 6.

Note. If the decrease causes the qualified basis to fall below the minimum set-aside requirements of section 42(g)(1) (the 20-50 test or the 40-60 test), then 100% of the amount shown on line 5 must be recaptured. Enter 1.000 on line 6. If you elected the 40-60 test for this building and the decrease causes you to fall below 40%, you cannot switch to the 20-50 test to meet the set-aside requirements. You must recapture the entire amount shown on line 5.

Line 7. If there was a prior recapture of accelerated credits on the building, do not recapture that amount again as the result of the current reduction in qualified basis. The example below demonstrates how to incorporate into the current (Year 4) recapture the first year (Year 1) accelerated portion as a result of a prior year (Year 2) recapture event.

Line 9. Compute the unused portion of the accelerated amount on line 7 by:

Step 1. Totalling the credits attributable to the building that you could not use in prior years.*

Step 2. Reducing the result of step 1 by any unused credits attributable to additions to qualified basis.

Step 3. Multiplying the result of step 2 by the decimal amount on line 4.

Step 4. Multiplying the result of step 3 by the decimal amount on line 6.

Step 5. Enter the result of step 4 on line 9.

*Generally, this is the amount of credit reported on line 1 of this Form 8611 reduced by the total low-income housing credits allowed on Form 8586 or Form 3800 for each year.

Special rule for electing large partnerships. Enter zero on line 9. An electing large partnership is treated as having fully used all prior year credits.

Line 11. Compute the interest separately for each prior tax year for which a credit is being recaptured. Interest must be computed at the overpayment rate determined under section 6621(a)(1) and compounded on a daily basis from the due date (not including extensions) of the return for the prior year until the earlier of (a) the due date (not including extensions) of the return for the recapture year, or (b) the date the return for the recapture year is filed and any income tax due for that year has been fully paid.

Tables of interest factors to compute daily compound interest were published in Rev. Proc. 95-17, 1995-1 C.B. 556. The interest rate in effect through March 31, 2009, is shown in Rev. Rul. 2008-54, 2008-52 I.R.B. 1352. For periods after

March 31, 2009, use the overpayment rate under section 6621(a)(1) in the revenue rulings published quarterly in the Internal Revenue Bulletin.

Note. If the line 8 recapture amount is from a section 42(j)(5) partnership, the partnership will figure the interest and include it in the recapture amount reported to you. Enter "-0-" on line 11 and write "Section 42(j)(5)" to the left of the entry space for line 11.

Line 13. Subtract the amount on line 9 from the total of all prior year unused credits attributable to the building (Step 1 of the line 9 instruction above). Enter the result on line 13.

Line 14.

For information on how to report the recapture tax on...

See the instructions for the...

Form 1040

"Total tax" line in the Instructions for Form 1040

Form 1120

"Other taxes" line in the Instructions for Form 1120

Special rule for electing large

partnerships. Subtract the credit shown on Form 8586 from the total of the line 14 amounts from all Forms 8611. Enter the result (but not less than zero) on Form 1065-B, Part I, line 26.

Note. You must also reduce the current year low-income housing credit, before entering it on Schedules K and K-1, by the amount of the reduction to the total of the recapture amounts.

Line 15. Carry forward the low-income housing credit attributable to this building to the next tax year. Report any carryforward attributable to buildings placed in service before 2008 on the carryforward line of Form 3800 for the next tax year. Report any carryforward attributable to buildings placed in service after 2007 on the carryforward line of Form 8586 for the next tax year. See the

Line 7—Example. \$2,700 of accelerated portion of low-income housing credit spread over a 10-year period and not falling below the minimum set-asides for the building. Also, there was a 20% reduction in qualified basis in Year 2 and 30% in Year 4.

	Year 1	Year 2	Year 3	Year 4*
Low-income housing credit	\$270	\$216 (\$270 × .8 (20% reduction in qualified basis))	\$270	\$189 (\$270 × .7 (30% reduction in qualified basis))
Recapture of Year 1 low-income housing credit		\$18 (\$270 × .333 × .2 (20% reduction in qualified basis))		\$9 (\$27 (\$270 × .333 × .3 (30% reduction in qualified basis) minus \$18 Year 2 recapture))

* You will have to complete the rest of the form to figure the recapture as the result of the current year reduction in basis as it affects the Year 2 and Year 3 credit.

instructions for Forms 8586 and 3800 for details on how to report the carryforward of unused credits.

Lines 16 and 17. Only section 42(j)(5) partnerships complete these lines. This is a partnership (other than an electing large partnership) that has at least 35 partners, unless the partnership elects (or has previously elected) not to be treated as a section 42(j)(5) partnership. For purposes of this definition, a husband and wife are treated as one partner.

For purposes of determining the credit recapture amount, a section 42(j)(5) partnership is treated as the taxpayer to which the low-income housing credit was allowed and as if the amount of credit allowed was the entire amount allowable under section 42(a).

See the instructions for line 11 to figure the interest on line 16. The partnership must attach Form 8611 to its Form 1065 and allocate this amount to

each partner on Schedule K-1 (Form 1065) in the same manner as the partnership's taxable income is allocated to each partner.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping . . . 8 hr., 21 min.

Learning about the law or the form . . . 1 hr.

Preparing and sending the form to the IRS . . 1 hr., 10 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the IRS at the address listed in the instructions for the tax return with which this form is filed.